Part II begins on page 19275

Pages 19163–19304

PART I

FEDERAL REGISTER

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Contents

(Continued on next page)

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1964, and specifies how they are affected.

3 CFR

PROCLAMATION:
3030 (superseded by Proc. 3632) ... 19167
3632 ... 19167
EXECUTIVE ORDERS:
10651 (revoked by EO 11190) ... 19183
11190 ... 19183

7 CFR

730 (2 documents) ... 19232, 19233
812 ... 19233
959 ... 19234
1062 ... 19235
1126 ... 19235
PROPOSED RULES:
911 ... 19259
915 ... 19259
980 ... 19260

9 CFR

PROPOSED RULES:
201 ... 19261

10 CFR

4 ... 19277

12 CFR

561 ... 19236
563 ... 19236

14 CFR

1 ... 19186
15 ... 19283
40 ... 19186
41 ... 19186
42 ... 19186
71 [New] ... 19185
75 [New] ... 19185
121 [New] ... 19186
379 ... 19287

15 CFR

503 ... 19236

17 CFR

PROPOSED RULES:
240 ... 19263

18 CFR

260 ... 19237

19 CFR

Appendix A ... 19238

21 CFR

51 ... 19240
121 ... 19240
305 ... 19241

26 CFR

1 ... 19241

32 CFR

300 ... 19291

32A CFR

OEP (Ch. I):
DMO–IX—3 ... 19249

33 CFR

24 ... 19297

38 CFR

18 ... 19301

43 CFR

2230 ... 19248
2320 ... 19248
3130 ... 19248
3210 ... 19248
3220 ... 19248
3630 ... 19248
4130 ... 19248

45 CFR

201 ... 19250
202 ... 19252
211 ... 19252
212 ... 19254

47 CFR

1 ... 19255
81 ... 19256
83 ... 19256
87 ... 19256
PROPOSED RULES:
73 (2 documents) ... 19261, 19262

49 CFR

PROPOSED RULES:
Ch. I ... 19262

50 CFR

33 (2 documents) ... 19257, 19258

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Presidential Documents

Title 3—THE PRESIDENT

Proclamation 3632

REGULATIONS FOR PREVENTING COLLISIONS AT SEA

By the President of the United States of America

A Proclamation

WHEREAS certain regulations designated as Regulations for Preventing Collisions at Sea, 1960, were approved by the International Conference on Safety of Life at Sea, 1960, held at London from May 17 to June 17, 1960; and

WHEREAS the Act of September 24, 1963 (Public Law 88-131, 77 Stat. 194), hereinafter referred to as the Act, authorizes the President of the United States of America to proclaim those regulations, which are set forth in Section 4 of the Act, and to specify the effective date thereof, the regulations to have effect (after the effective date thus specified), as if enacted by statute; and

WHEREAS on March 12, 1964, the Government of the United States of America communicated to the Inter-Governmental Maritime Consultative Organization, as depository agency, its acceptance of the regulations; and

WHEREAS the Government of the United States of America has been notified by the Inter-Governmental Maritime Consultative Organization, as depository agency, that substantial unanimity has been reached as to the acceptance by interested countries, and that it has fixed September 1, 1965, as the date on and after which the regulations shall be applied by the governments which have accepted them; and

WHEREAS the Act provides that the Regulations for Preventing Collisions at Sea, 1948 (65 Stat. 406), as proclaimed and made effective as of January 1, 1954, by Proclamation No. 3030 of August 15, 1953, shall be of no further force or effect after the effective date proclaimed for the Regulations for Preventing Collisions at Sea, 1960.

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States of America, under and by virtue of the authority vested in me by the Act, do hereby proclaim the Regulations for Preventing Collisions at Sea, 1960, as set forth in Section 4 of the Act, which regulations are attached hereto and made a part hereof, and do hereby specify that the effective date thereof shall be September 1, 1965.

Proclamation No. 3030 is superseded effective as of September 1, 1965.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-ninth day of December in the year of our Lord nineteen hundred and sixty-four, and of the Independence of the United States of America the one hundred and eighty-ninth.

[SEAL]

LYNDON B. JOHNSON

By the President:

DEAN RUSK,
Secretary of State.

"REGULATIONS FOR PREVENTING COLLISIONS AT SEA

"PART A.—PRELIMINARY AND DEFINITIONS

"Rule 1

"(a) These Rules shall be followed by all vessels and seaplanes upon the high seas and in all waters connected therewith navigable by seagoing vessels, except as provided in Rule 30. Where, as a result of their special construction, it is not possible for seaplanes to comply fully with the provisions of Rules specifying the carrying of lights and shapes, these provisions shall be followed as closely as circumstances permit.

"(b) The Rules concerning lights shall be complied with in all weathers from sunset to sunrise, and during such times no other lights shall be exhibited, except such lights as cannot be mistaken for the prescribed lights or do not impair their visibility or distinctive character, or interfere with the keeping of a proper look-out. The lights prescribed by these Rules may also be exhibited from sunrise to sunset in restricted visibility and in all other circumstances when it is deemed necessary.

"(c) In the following Rules, except where the context otherwise requires—

"(i) the word 'vessel' includes every description of water craft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;

"(ii) the word 'seaplane' includes a flying boat and any other aircraft designed to manoeuvre on the water;

"(iii) the term 'power-driven vessel' means any vessel propelled by machinery;

"(iv) every power-driven vessel which is under sail and not under power is to be considered a sailing vessel, and every vessel under power, whether under sail or not, is to be considered a power-driven vessel;

"(v) a vessel or seaplane on the water is 'under way' when she is not at anchor, or made fast to the shore, or aground;

"(vi) the term 'height above the hull' means height above the uppermost continuous deck;

"(vii) the length and breadth of a vessel shall be her length overall and largest breadth;

"(viii) the length and span of a seaplane shall be its maximum length and span as shown in its certificate of airworthiness, or as determined by measurement in the absence of such certificate;

"(ix) vessels shall be deemed to be in sight of one another only when one can be observed visually from the other;

"(x) the word 'visible', when applied to lights, means visible on a dark night with a clear atmosphere;

"(xi) the term 'short blast' means a blast of about one second's duration;

"(xii) the term 'prolonged blast' means a blast of from four to six seconds' duration;

"(xiii) the word 'whistle' means any appliance capable of producing the prescribed short and prolonged blasts;

"(xiv) the term 'engaged in fishing' means fishing with nets, lines or trawls but does not including fishing with trolling lines.

"PART B.—LIGHTS AND SHAPES

"Rule 2

"(a) A power-driven vessel when under way shall carry—

"(i) On or in front of the foremast, or if a vessel without a foremast then in the forepart of the vessel, a white light so constructed as to show an unbroken light over an arc of the horizon of 225 degrees (20 points of the compass), so fixed as to show the light 112½ degrees (10 points) on each side of the vessel, that is, from right ahead to 22½ degrees (2 points) abaft the beam on either side, and of such a character as to be visible at a distance of at least 5 miles.

"(ii) Either forward or abaft the white light prescribed in sub-section (i) a second white light similar in construction and character to that light. Vessels of less than 150 feet in length shall not be required to carry this second white light but may do so.

"(iii) These two white lights shall be so placed in a line with and over the keel that one shall be at least 15 feet higher than the other and in such a position that the forward light shall always be shown lower than the after one. The horizontal distance between the two white lights shall be at least three times the vertical distance. The lower of these two white lights or, if only one is carried, then that light, shall be placed at a height above the hull of not less than 20 feet, and, if the breadth of the vessel exceeds 20 feet, then at a height above the hull not less than such breadth, so however that the light need not be placed at a greater height above the hull than 40 feet. In all circumstances the light or lights, as the case may be, shall be so placed as to be clear of and above all other lights and obstructing superstructures.

"(iv) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of 112½ degrees (10 points of the compass), so fixed as to show the light from right ahead to 22½ degrees (2 points) abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least 2 miles.

"(v) On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of 112½ degrees (10 points of the compass), so fixed as to show the light from right ahead to 22½ degrees (2 points) abaft the beam on the port side, and of such a character as to be visible at a distance of at least 2 miles.

"(vi) The said green and red sidelights shall be fitted with inboard screens projecting at least 3 feet forward from the light, so as to prevent these lights from being seen across the bows.

"(b) A seaplane under way on the water shall carry—

"(i) In the forepart amidships where it can best be seen a white light, so constructed as to show an unbroken light over an arc of the horizon of 220 degrees of the compass, so fixed as to show the light 110 degrees on each side of the seaplane, namely, from right ahead to 20 degrees abaft the beam on either side, and of such a character as to be visible at a distance of at least 3 miles.

"(ii) On the right or starboard wing tip a green light, so constructed as to show an unbroken light over an arc of the horizon of 110 degrees of the compass, so fixed as to show the light from right ahead to 20 degrees abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least 2 miles.

"(iii) On the left or port wing tip a red light, so constructed as to show an unbroken light over an arc of the horizon of 110 degrees of the compass, so fixed as to show the light from right ahead to 20 degrees abaft the beam on the port side, and of such a character as to be visible at a distance of at least 2 miles.

"Rule 3

"(a) A power-driven vessel when towing or pushing another vessel or seaplane shall, in addition to her sidelights, carry two white lights in a vertical line one over the other, not less than 6 feet apart, and when towing and the length of the tow, measuring from the stern of the towing vessel to the stern of the last vessel towed, exceeds 600 feet, shall carry three white lights in a vertical line one over the other, so that the upper and lower lights shall be the same distance from, and not less than 6 feet above or below, the middle light. Each of these lights shall be of the same construction and character and one of them shall be carried in the same position as the white light prescribed in Rule 2(a)(i). None of these lights shall be carried at a height of less than 14 feet above the hull. In a vessel with a single mast, such lights may be carried on the mast.

"(b) The towing vessel shall also show either the stern light prescribed in Rule 10 or in lieu of that light a small white light abaft the funnel or aftermast for the tow to steer by, but such light shall not be visible forward of the beam.

"(c) Between sunrise and sunset a power-driven vessel engaged in towing, if the length of tow exceeds 600 feet, shall carry, where it can best be seen, a black diamond shape at least 2 feet in diameter.

"(d) A seaplane on the water, when towing one or more seaplanes or vessels, shall carry the lights prescribed in Rule 2(b) (i), (ii) and (iii); and, in addition, she shall carry a second white light of the same construction and character as the white light prescribed in Rule 2(b) (i), and in a vertical line at least 6 feet above or below such light.

"Rule 4

"(a) A vessel which is not under command shall carry, where they can best be seen, and, if a power-driven vessel, in lieu of the lights prescribed in Rule 2(a) (i) and (ii), two red lights in a vertical line one over the other not less than 6 feet apart, and of such a character as to be visible all round the horizon at a distance of at least 2 miles. By day, she shall carry in a vertical line one over the other not less than 6 feet apart, where they can best be seen, two black balls or shapes each not less than 2 feet in diameter.

"(b) A seaplane on the water which is not under command may carry, where they can best be seen, and in lieu of the light prescribed in Rule 2(b)(i), two red lights in a vertical line, one over the other, not less than 3 feet apart, and of such a character as to be visible all round the horizon at a distance of at least 2 miles, and may by day carry in a vertical line one over the other not less than 3 feet apart, where they can best be seen, two black balls or shapes, each not less than 2 feet in diameter.

"(c) A vessel engaged in laying or in picking up a submarine cable or navigation mark, or a vessel engaged in surveying or underwater operations, or a vessel engaged in replenishment at sea, or in the launching or recovery of aircraft when from the nature of her work she is unable to get out of the way of approaching vessels, shall carry, in lieu of the lights prescribed in Rule 2(a) (i) and (ii), or Rule 7(a)(i), three lights in a vertical line one over the other so that the upper and

lower lights shall be the same distance from, and not less than 6 feet above or below, the middle light. The highest and lowest of these lights shall be red, and the middle light shall be white, and they shall be of such a character as to be visible all round the horizon at a distance of at least 2 miles. By day, she shall carry in a vertical line one over the other not less than 6 feet apart, where they can best be seen, three shapes each not less than 2 feet in diameter, of which the highest and lowest shall be globular in shape and red in colour, and the middle one diamond in shape and white.

"(d)(i) A vessel engaged in minesweeping operations shall carry at the fore truck a green light, and at the end or ends of the fore yard on the side or sides on which danger exists, another such light or lights. These lights shall be carried in addition to the light prescribed in Rule 2(a)(i) or Rule 7(a)(i), as appropriate, and shall be of such a character as to be visible all round the horizon at a distance of at least 2 miles. By day she shall carry black balls, not less than 2 feet in diameter, in the same position as the green lights.

"(ii) the showing of these lights or balls indicates that it is dangerous for other vessels to approach closer than 3,000 feet astern of the minesweeper or 1,500 feet on the side or sides on which danger exists.

"(e) The vessels and seaplanes referred to in this Rule, when not making way through the water, shall show neither the coloured sidelights nor the stern light, but when making way they shall show them.

"(f) The lights and shapes prescribed in this Rule are to be taken by other vessels and seaplanes as signals that the vessel or seaplane showing them is not under command and cannot therefore get out of the way.

"(g) These signals are not signals of vessels in distress and requiring assistance. Such signals are contained in Rule 31.

"Rule 5

"(a) A sailing vessel under way and any vessel or seaplane being towed shall carry the same lights as are prescribed in Rule 2 for a power-driven vessel or a seaplane under way, respectively, with the exception of the white lights prescribed therein, which they shall never carry. They shall also carry stern lights as prescribed in Rule 10, provided that vessels towed, except the last vessel of a tow, may carry, in lieu of such stern light, a small white light as prescribed in Rule 3(b).

"(b) In addition to the lights prescribed in section (a), a sailing vessel may carry on the top of the foremast two lights in a vertical line one over the other, sufficiently separated so as to be clearly distinguished. The upper light shall be red and the lower light shall be green. Both lights shall be constructed and fixed as prescribed in Rule 2(a)(i) and shall be visible at a distance of at least 2 miles.

"(c) A vessel being pushed ahead shall carry, at the forward end, on the starboard side a green light and on the port side a red light, which shall have the same characteristics as the lights prescribed in Rule 2(a) (iv) and (v) and shall be screened as provided in Rule 2(a)(vi), provided that any number of vessels pushed ahead in a group shall be lighted as one vessel.

"(d) Between sunrise and sunset a vessel being towed, if the length of the tow exceeds 600 feet, shall carry where it can best be seen a black diamond shape at least 2 feet in diameter.

"Rule 6

"(a) When it is not possible on account of bad weather or other sufficient cause to fix the green and red sidelights, these lights shall be kept at hand lighted and ready for immediate use, and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side, nor, if practicable, more than 22½ degrees (2 points) abaft the beam on their respective sides.

"(b) To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the lights they respectively contain, and shall be provided with proper screens.

"Rule 7

"Power-driven vessels of less than 65 feet in length, vessels under oars or sails of less than 40 feet in length, and rowing boats, when under way shall not be required to carry the lights prescribed in Rules 2, 3 and 5, but if they do not carry them they shall be provided with the following lights—

"(a) Power-driven vessels of less than 65 feet in length, except as provided in sections (b) and (c), shall carry—

"(i) In the forepart of the vessel, where it can best be seen, and at a height above the gunwale of not less than 9 feet, a white light constructed and fixed as prescribed in Rule 2(a)(i) and of such a character as to be visible at a distance of at least 3 miles.

"(ii) Green and red sidelights constructed and fixed as prescribed in Rule 2(a)(iv) and (v), and of such a character as to be visible at a distance of at least 1 mile, or a combined lantern showing a green light and a red light from right ahead to 22½ degrees (2 points) abaft the beam on their respective sides. Such lantern shall be carried not less than 3 feet below the white light.

"(b) Power-driven vessels of less than 65 feet in length when towing or pushing another vessel shall carry—

"(i) In addition to the sidelights or the combined lantern prescribed in section (a)(ii) two white lights in a vertical line, one over the other not less than 4 feet apart. Each of these lights shall be of the same construction and character as the white light prescribed in section (a)(i) and one of them shall be carried in the same position. In a vessel with a single mast such lights may be carried on the mast.

"(ii) Either a stern light as prescribed in Rule 10 or in lieu of that light a small white light abaft the funnel or aftermast for the tow to steer by, but such light shall not be visible forward of the beam.

"(c) Power-driven vessels of less than 40 feet in length may carry the white light at a less height than 9 feet above the gunwale but it shall be carried not less than 3 feet above the sidelights or the combined lantern prescribed in section (a)(ii).

"(d) Vessels of less than 40 feet in length, under oars or sails, except as provided in section (f), shall, if they do not carry the sidelights, carry, where it can best be seen, a lantern showing a green light on one side and a red light on the other, of such a character as to be visible at a distance of at least 1 mile, and so fixed that the green light shall not be seen on the port side, nor the red light on the starboard side. Where it is not possible to fix this light, it shall be kept ready for immediate use and shall be exhibited in sufficient time to prevent

collision and so that the green light shall not be seen on the port side nor the red light on the starboard side.

"(e) The vessels referred to in this Rule when being towed shall carry the sidelights or the combined lantern prescribed in sections (a) or (d) of this Rule, as appropriate, and a stern light as prescribed in Rule 10, or, except the last vessel of the tow, a small white light as prescribed in section (b)(ii). When being pushed ahead they shall carry at the forward end the sidelights or combined lantern prescribed in sections (a) or (d) of this Rule, as appropriate, provided that any number of vessels referred to in this Rule when pushed ahead in a group shall be lighted as one vessel under this Rule unless the overall length of the group exceeds 65 feet when the provisions of Rule 5(c) shall apply.

"(f) Small rowing boats, whether under oars or sail, shall only be required to have ready at hand an electric torch or a lighted lantern, showing a white light, which shall be exhibited in sufficient time to prevent collision.

"(g) The vessels and boats referred to in this Rule shall not be required to carry the lights or shapes prescribed in Rules 4(a) and 11(e) and the size of their day signals may be less than is prescribed in Rules 4(c) and 11(c).

"Rule 8

"(a) A power-driven pilot-vessel when engaged on pilotage duty and under way—

"(i) Shall carry a white light at the masthead at a height of not less than 20 feet above the hull, visible all round the horizon at a distance of at least 3 miles and at a distance of 8 feet below it a red light similar in construction and character. If such a vessel is of less than 65 feet in length she may carry the white light at a height of not less than 9 feet above the gunwale and the red light at a distance of 4 feet below the white light.

"(ii) Shall carry the sidelights or lanterns prescribed in Rule 2(a) (iv) and (v) or Rule 7(a) (ii) or (d), as appropriate, and the stern light prescribed in Rule 10.

"(iii) Shall show one or more flare-up lights at intervals not exceeding 10 minutes. An intermittent white light visible all round the horizon may be used in lieu of flare-up lights.

"(b) A sailing pilot-vessel when engaged on pilotage duty and under way—

"(i) Shall carry a white light at the masthead visible all round the horizon at a distance of at least 3 miles.

"(ii) Shall be provided with the sidelights or lantern prescribed in Rules 5(a) or 7(d), as appropriate, and shall, on the near approach of or to other vessels, have such lights ready for use, and shall show them at short intervals to indicate the direction in which she is heading, but the green light shall not be shown on the port side nor the red light on the starboard side. She shall also carry the stern light prescribed in Rule 10.

"(iii) Shall show one or more flare-up lights at intervals not exceeding ten minutes.

"(c) A pilot-vessel when engaged on pilotage duty and not under way shall carry the lights and show the flares prescribed in sections (a) (i) and (iii) or (b) (i) and (iii), as appropriate, and if at anchor shall also carry the anchor lights prescribed in Rule 11.

"(d) A pilot-vessel when not engaged on pilotage duty shall show the lights or shapes for a similar vessel of her length.

"Rule 9

"(a) Fishing vessels when not engaged in fishing shall show the lights or shapes for similar vessels of their length.

"(b) Vessels engaged in fishing, when under way or at anchor, shall show only the lights and shapes prescribed in this Rule, which lights and shapes shall be visible at a distance of at least 2 miles.

"(c) (i) Vessels when engaged in trawling, by which is meant the dragging of a dredge net or other apparatus through the water, shall carry two lights in a vertical line, one over the other, not less than 4 feet nor more than 12 feet apart. The upper of these lights shall be green and the lower light white and each shall be visible all round the horizon. The lower of these two lights shall be carried at a height above the sidelights not less than twice the distance between the two vertical lights.

"(ii) Such vessels may in addition carry a white light similar in construction to the white light prescribed in Rule 2(a) (i) but such light shall be carried lower than and abaft the all-round green and white lights.

"(d) Vessels when engaged in fishing, except vessels engaged in trawling, shall carry the lights prescribed in section (c) (i) except that the upper of the two vertical lights shall be red. Such vessels if of less than 40 feet in length may carry the red light at a height of not less than 9 feet above the gunwale and the white light not less than 3 feet below the red light.

"(e) Vessels referred to in sections (c) and (d), when making way through the water, shall carry the sidelights or lanterns prescribed in Rule 2(a) (iv) and (v) or Rule 7 (a) (ii) or (d), as appropriate, and the stern light prescribed in Rule 10. When not making way through the water they shall show neither the sidelights nor the stern light.

"(f) Vessels referred to in section (d) with outlying gear extending more than 500 feet horizontally into the seaway shall carry an additional all-round white light at a horizontal distance of not less than 6 feet nor more than 20 feet away from the vertical lights in the direction of the outlying gear. This additional white light shall be placed at a height not exceeding that of the white light prescribed in section (c) (i) and not lower than the sidelights.

"(g) In addition to the lights which they are required by this Rule to carry, vessels engaged in fishing may, if necessary in order to attract the attention of an approaching vessel, use a flare-up light, or may direct the beam of their searchlight in the direction of a danger threatening the approaching vessel, in such a way as not to embarrass other vessels. They may also use working lights but fishermen shall take into account that specially bright or insufficiently screened working lights may impair the visibility and distinctive character of the lights prescribed in this Rule.

"(h) By day vessels when engaged in fishing shall indicate their occupation by displaying where it can best be seen a black shape consisting of two cones each not less than 2 feet in diameter with their points together one above the other. Such vessels if of less than 65 feet in length may substitute a basket for such black shape. If their outlying gear extends more than 500 feet horizontally into the seaway vessels engaged in fishing shall display in addition one black conical shape, point upwards, in the direction of the outlying gear.

"NOTE.—Vessels fishing with trolling lines are not 'engaged in fishing' as defined in Rule 1(c) (xiv).

"Rule 10

"(a) Except where otherwise provided in these Rules, a vessel when under way shall carry at her stern a white light, so constructed that it shall show an unbroken light over an arc of the horizon of 135 degrees (12 Points of the compass), so fixed as to show the light 67½ degrees (6 points) from right aft on each side of the vessel, and of such a character as to be visible at a distance of at least 2 miles.

"(b) In a small vessel, if it is not possible on account of bad weather or other sufficient cause for this light to be fixed, an electric torch or a lighted lantern showing a white light shall be kept at hand ready for use and shall, on the approach of an overtaking vessel, be shown in sufficient time to prevent collision.

"(c) A seaplane on the water when under way shall carry on her tail a white light, so constructed as to show an unbroken light over an arc of the horizon of 140 degrees of the compass, so fixed as to show the light 70 degrees from right aft on each side of the seaplane, and of such a character as to be visible at a distance of at least 2 miles.

"Rule 11

"(a) A vessel of less than 150 feet in length, when at anchor, shall carry in the forepart of the vessel, where it can best be seen, a white light visible all round the horizon at a distance of at least 2 miles. Such a vessel may also carry a second white light in the position prescribed in section (b) of this Rule but shall not be required to do so. The second white light, if carried, shall be visible at a distance of at least 2 miles and so placed as to be as far as possible visible all round the horizon.

"(b) A vessel of 150 feet or more in length, when at anchor, shall carry near the stem of the vessel, at a height of not less than 20 feet above the hull, one such light, and at or near the stern of the vessel and at such a height that it shall be not less than 15 feet lower than the forward light, another such light. Both these lights shall be visible at a distance of at least 3 miles and so placed as to be as far as possible visible all round the horizon.

"(c) Between sunrise and sunset every vessel when at anchor shall carry in the forepart of the vessel, where it can best be seen, one black ball not less than 2 feet in diameter.

"(d) A vessel engaged in laying or in picking up a submarine cable or navigation mark, or a vessel engaged in surveying or underwater operations, when at anchor, shall carry the lights or shapes prescribed in Rule 4(c) in addition to those prescribed in the appropriate preceding sections of this Rule.

"(e) A vessel aground shall carry the light or lights prescribed in sections (a) or (b) and the two red lights prescribed in Rule 4(a). By day she shall carry, where they can best be seen, three black balls, each not less than 2 feet in diameter, placed in a vertical line one over the other, not less than 6 feet apart.

"(f) A seaplane on the water under 150 feet in length, when at anchor, shall carry, where it can best be seen, a white light, visible all round the horizon at a distance of at least 2 miles.

"(g) A seaplane on the water 150 feet or upwards in length, when at anchor, shall carry, where they can best be seen, a white light forward and a white light aft, both lights visible all round the horizon at a distance of at least 3 miles; and, in addition, if the seaplane is more than 150 feet in span, a white light on each side to indicate the maximum span, and visible, so far as practicable, all round the horizon at a distance of 1 mile.

"(h) A seaplane aground shall carry on anchor light or lights as prescribed in sections (f) and (g), and in addition may carry two red lights in a vertical line, at least 3 feet apart, so placed as to be visible all round the horizon.

"Rule 12

"Every vessel or seaplane on the water may, if necessary in order to attract attention, in addition to the lights which she is by these Rules required to carry, show a flare-up light or use a detonating or other efficient sound signal that cannot be mistaken for any signal authorised elsewhere under these Rules.

"Rule 13

"(a) Nothing in these Rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for ships of war, for vessels sailing under convoy, for fishing vessels engaged in fishing as a fleet or for seaplanes on the water.

"(b) Whenever the Government concerned shall have determined that a naval or other military vessel or waterborne seaplane of special construction or purpose cannot comply fully with the provisions of any of these Rules with respect to the number, position, range or arc of visibility of lights or shapes, without interfering with the military function of the vessel or seaplane, such vessel or seaplane shall comply with such other provisions in regard to the number, position, range or arc of visibility of lights or shapes as her Government shall have determined to be the closest possible compliance with these Rules in respect of that vessel or seaplane.

"Rule 14

"A vessel proceeding under sail, when also being propelled by machinery, shall carry in the daytime forward, where it can best be seen, one black conical shape, point downwards, not less than 2 feet in diameter at its base.

"PART C.—SOUND SIGNALS AND CONDUCT IN RESTRICTED VISIBILITY

"PRELIMINARY

"1. The possession of information obtained from radar does not relieve any vessel of the obligation of conforming strictly with the Rules and, in particular, the obligations contained in Rules 15 and 16.

"2. The Annex to the Rules contains recommendations intended to assist in the use of radar as an aid to avoiding collision in restricted visibility.

"Rule 15

"(a) A power-driven vessel of 40 feet or more in length shall be provided with an efficient whistle, sounded by steam or by some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and with an efficient fog horn to be sounded by mechanical means, and also with an efficient bell. A sailing vessel of 40 feet or more in length shall be provided with a similar fog horn and bell.

"(b) All signals prescribed in this Rule for vessels under way shall be given—

"(i) by power-driven vessels on the whistle;

"(ii) by sailing vessels on the fog horn;

"(iii) by vessels towed on the whistle or fog horn.

"(c) In fog, mist, falling snow, heavy rainstorms, or any other condition similarly restricting visibility, whether by day or night, the signals prescribed in this Rule shall be used as follows—

"(i) A power-driven vessel making way through the water shall sound at intervals of not more than 2 minutes a prolonged blast.

"(ii) A power-driven vessel under way, but stopped and making no way through the water, shall sound at intervals of not more than 2 minutes two prolonged blasts, with an interval of about 1 second between them.

"(iii) A sailing vessel under way shall sound, at intervals of not more than 1 minute, when on the starboard tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession.

"(iv) A vessel when at anchor shall at intervals of not more than 1 minute ring the bell rapidly for about 5 seconds. In vessels of more than 350 feet in length the bell shall be sounded in the forepart of the vessel, and in addition there shall be sounded in the after part of the vessel, at intervals of not more than 1 minute for about 5 seconds, a gong or other instrument, the tone and sounding of which cannot be confused with that of the bell. Every vessel at anchor may in addition, in accordance with Rule 12, sound three blasts in succession, namely, one short, one prolonged, and one short blast, to give warning of her position and of the possibility of collision to an approaching vessel.

"(v) A vessel when towing, a vessel engaged in laying or in picking up a submarine cable or navigation mark, and a vessel under way which is unable to get out of the way of an approaching vessel through being not under command or unable to manoeuvre as required by these Rules shall, instead of the signals prescribed in subsections (i), (ii) and (iii) sound, at intervals of not more than 1 minute, three blasts in succession, namely, one prolonged blast followed by two short blasts.

"(vi) A vessel towed, or, if more than one vessel is towed, only the last vessel of the tow, if manned, shall, at intervals of not more than 1 minute, sound four blasts in succession, namely, one prolonged blast followed by three short blasts. When practicable, this signal shall be made immediately after the signal made by the towing vessel.

"(vii) A vessel aground shall give the bell signal and, if required, the gong signal, prescribed in sub-section (iv) and shall, in addition, give 3 separate and distinct strokes on the bell immediately before and after such rapid ringing of the bell.

"(viii) A vessel engaged in fishing when under way or at anchor shall at intervals of not more than 1 minute sound the signal prescribed in sub-section (v). A vessel when fishing with trolling lines and under way shall sound the signals prescribed in subsections (i), (ii) or (iii) as may be appropriate.

"(ix) A vessel of less than 40 feet in length, a rowing boat, or a seaplane on the water, shall not be obliged to give the above-mentioned signals but if she does not, she shall make some other efficient sound signal at intervals of not more than 1 minute.

"(x) A power-driven pilot-vessel when engaged on pilotage duty may, in addition to the signals prescribed in sub-sections

(i), (ii) and (iv), sound an identity signal consisting of 4 short blasts.

"Rule 16

"(a) Every vessel, or seaplane when taxi-ing on the water, shall, in fog, mist, falling snow, heavy rainstorms or any other condition similarly restricting visibility, go at a moderate speed, having careful regard to the existing circumstances and conditions.

"(b) A power-driven vessel hearing, apparently forward of her beam, the fog-signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over.

"(c) A power-driven vessel which detects the presence of another vessel forward of her beam before hearing her fog signal or sighting her visually may take early and substantial action to avoid a close quarters situation but, if this cannot be avoided, she shall, so far as the circumstances of the case admit, stop her engines in proper time to avoid collision and then navigate with caution until danger of collision is over.

"Part D.—Steering and Sailing Rules

"preliminary

"1. In obeying and construing these Rules, any action taken should be positive, in ample time, and with due regard to the observance of good seamanship.

"2. Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist.

"3. Mariners should bear in mind that seaplanes in the act of landing or taking off, or operating under adverse weather conditions, may be unable to change their intended action at the last moment.

"4. Rules 17 to 24 apply only to vessels in sight of one another.

"Rule 17

"(a) When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other as follows—

"(i) When each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other.

"(ii) When both have the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward.

"(b) For the purposes of this Rule the windward side shall be deemed to be the side opposite to that on which the mainsail is carried or, in the case of a square-rigged vessel, the side opposite to that on which the largest fore-and-aft sail is carried.

"Rule 18

"(a) When two power-driven vessels are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other. This Rule only applies to cases where vessels are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two vessels which must, if both keep on their respective course, pass clear of each other. The only cases to which it does apply

are when each of two vessels is end on, or nearly end on, to the other; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own; and by night, to cases in which each vessel is in such a position as to see both the sidelights of the other. It does not apply, by day, to cases in which a vessel sees another ahead crossing her own course; or, by night, to cases where the red light of one vessel is opposed to the red light of the other or where the green light of one vessel is opposed to the green light of the other or where a red light without a green light or a green light without a red light is seen ahead, or where both green and red lights are seen anywhere but ahead.

"(b) For the purposes of this Rule and Rules 19 to 29 inclusive, except Rule 20(c) and Rule 28, a seaplane on the water shall be deemed to be a vessel, and the expression 'power-driven vessel' shall be construed accordingly.

"Rule 19

"When two power-driven vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other.

"Rule 20

"(a) When a power-driven vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, except as provided for in Rules 24 and 26, the power-driven vessel shall keep out of the way of the sailing vessel.

"(b) This Rule shall not give to a sailing vessel the right to hamper, in a narrow channel, the safe passage of a power-driven vessel which can navigate only inside such channel.

"(c) A seaplane on the water shall, in general, keep well clear of all vessels and avoid impeding their navigation. In circumstances, however, where risk of collision exists, she shall comply with these Rules.

"Rule 21

"Where by any of these Rules one of two vessels is to keep out of the way, the other shall keep her course and speed. When, from any cause, the latter vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert collision (see Rules 27 and 29).

"Rule 22

"Every vessel which is directed by these Rules to keep out of the way of another vessel shall, so far as possible, take positive early action to comply with this obligation, and shall, if the circumstances of the case admit, avoid crossing ahead of the other.

"Rule 23

"Every power-driven vessel which is directed by these Rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse.

"Rule 24

"(a) Notwithstanding anything contained in these Rules, every vessel overtaking any other shall keep out of the way of the overtaken vessel.

"(b) Every vessel coming up with another vessel from any direction more than 22½ degrees (2 points) abaft her beam, i.e., in such a position, with reference to the vessel which she is overtaking, that at night she would be unable to see either of that vessel's sidelights, shall be deemed to be an overtaking vessel; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these Rules, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

"(c) If the overtaking vessel cannot determine with certainty whether she is forward of or abaft this direction from the other vessel, she shall assume that she is an overtaking vessel and keep out of the way.

"Rule 25

"(a) In a narrow channel every power-driven vessel when proceeding along the course of the channel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel.

"(b) Whenever a power-driven vessel is nearing a bend in a channel where a vessel approaching from the other direction cannot be seen, such power-driven vessel, when she shall have arrived within one-half (½) mile of the bend, shall give a signal by one prolonged blast on her whistle which signal shall be answered by a similar blast given by any approaching power-driven vessel that may be within hearing around the bend. Regardless of whether an approaching vessel on the farther side of the bend is heard, such bend shall be rounded with alertness and caution.

"(c) In a narrow channel a power-driven vessel of less than 65 feet in length shall not hamper the safe passage of a vessel which can navigate only inside such channel.

"Rule 26

"All vessels not engaged in fishing, except vessels to which the provisions of Rule 4 apply, shall, when under way, keep out of the way of vessels engaged in fishing. This Rule shall not give to any vessel engaged in fishing the right of obstructing a fairway used by vessels other than fishing vessels.

"Rule 27

"In obeying and construing these Rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances, including the limitations of the craft involved, which may render a departure from the above Rules necessary in order to avoid immediate danger.

"Part E.—Sound Signals for Vessels in Sight of One Another

"Rule 28

"(a) When vessels are in sight of one another, a power-driven vessel under way, in taking any course authorised or required by these Rules, shall indicate that course by the following signals on her whistle, namely—

"One short blast to mean 'I am altering my course to starboard'.

"Two short blasts to mean 'I am altering my course to port'.

"Three short blasts to mean 'My engines are going astern'.

"(b) Whenever a power-driven vessel which, under these Rules, is to keep her course and speed, is in sight of another vessel and is in

doubt whether sufficient action is being taken by the other vessel to avert collision, she may indicate such doubt by giving at least five short and rapid blasts on the whistle. The giving of such a signal shall not relieve a vessel of her obligations under Rules 27 and 29 or any other Rule, or of her duty to indicate any action taken under these Rules by giving the appropriate sound signals laid down in this Rule.

"(c) Any whistle signal mentioned in this Rule may be further indicated by a visual signal consisting of a white light visible all round the horizon at a distance of at least 5 miles, and so devised that it will operate simultaneously and in conjunction with the whistle-sounding mechanism and remain lighted and visible during the same period as the sound signal.

"(d) Nothing in these Rules shall interfere with the operation of any special rules made by the Government of any nation with respect to the use of additional whistle signals between ships of war or vessels sailing under convoy.

"PART F.—MISCELLANEOUS

"Rule 29

"Nothing in these Rules shall exonerate any vessel, or the owner, master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

"Rule 30

"Reservation of Rules for Harbours and Inland Navigation

"Nothing in these Rules shall interfere with the operation of a special rule duly made by local authority relative to the navigation of any harbour, river, lake, or inland water, including a reserved seaplane area.

"Rule 31

"Distress Signals

"(a) When a vessel or seaplane on the water is in distress and requires assistance from other vessels or from the shore, the following shall be the signals to be used or displayed by her, either together or separately, namely—

"(i) A gun or other explosive signal fired at intervals of about a minute.

"(ii) A continuous sounding with any fog-signalling apparatus.

"(iii) Rockets or shells, throwing red stars fired one at a time at short intervals.

"(iv) A signal made by radiotelegraphy or by any other signalling method consisting of the group . . . — — — . . . in the Morse Code.

"(v) A signal sent by radiotelephony consisting of the spoken word 'Mayday'.

"(vi) The International Code Signal of distress indicated by N.C.

"(vii) A signal consisting of a square flag having above or below it a ball or anything resembling a ball.

"(viii) Flames on the vessel (as from a burning tar barrel, oil barrel, &c.).

"(ix) A rocket parachute flare or a hand flare showing a red light.

"(x) A smoke signal giving off a volume of orange-coloured smoke.

"(xi) Slowly and repeatedly raising and lowering arms outstretched to each side.

"NOTE.—Vessels in distress may use the radiotelegraph alarm signal or the radiotelephone alarm signal to secure attention to distress calls and messages. The radiotelegraph alarm signal, which is designed to actuate the radiotelegraph auto alarms of vessels so fitted, consists of a series of twelve dashes, sent in 1 minute, the duration of each dash being 4 seconds, and the duration of the interval between 2 consecutive dashes being 1 second. The radiotelephone alarm signal consists of 2 tones transmitted alternately over periods of from 30 seconds to 1 minute.

"(b) The use of any of the foregoing signals, except for the purpose of indicating that a vessel or seaplane is in distress, and the use of any signals which may be confused with any of the above signals, is prohibited.

"ANNEX TO THE RULES

"RECOMMENDATIONS ON THE USE OF RADAR INFORMATION AS AN AID TO AVOIDING COLLISIONS AT SEA

"(1) Assumptions made on scanty information may be dangerous and should be avoided.

"(2) A vessel navigating with the aid of radar in restricted visibility must, in compliance with Rule 16(a), go at a moderate speed. Information obtained from the use of radar is one of the circumstances to be taken into account when determining moderate speed. In this regard it must be recognised that small vessels, small icebergs and similar floating objects may not be detected by radar. Radar indications of one or more vessels in the vicinity may mean that "moderate speed" should be slower than a mariner without radar might consider moderate in the circumstances.

"(3) When navigating in restricted visibility the radar range and bearing alone do not constitute ascertainment of the position of the other vessel under Rule 16(b) sufficiently to relieve a vessel of the duty to stop her engines and navigate with caution when a fog signal is heard forward of the beam.

"(4) When action has been taken under Rule 16(c) to avoid a close quarters situation, it is essential to make sure that such action is having the desired effect. Alterations of course or speed or both are matters as to which the mariner must be guided by the circumstances of the case.

"(5) Alteration of course alone may be the most effective action to avoid close quarters provided that—

"(a) There is sufficient sea room.

"(b) It is made in good time.

"(c) It is substantial. A succession of small alterations of course should be avoided.

"(d) It does not result in a close quarters situation with other vessels.

"(6) The direction of an alteration of course is a matter in which the mariner must be guided by the circumstances of the case. An alteration to starboard, particularly when vessels are approaching apparently on opposite or nearly opposite courses, is generally preferable to an alteration to port.

"(7) An alteration of speed, either alone or in conjunction with an alteration of course, should be substantial. A number of small alterations of speed should be avoided.

"(8) If a close quarters situation is imminent, the most prudent action may be to take all way off the vessel."

[F.R. Doc. 64-13541; Filed, Dec. 30, 1964; 1:30 p.m.]

Executive Order 11190

PROVIDING FOR THE SCREENING OF THE READY RESERVE OF THE ARMED FORCES

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States and Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

SECTION 1. There is delegated to the Secretary of Defense (and to the Secretary of the Treasury with regard to the United States Coast Guard) the authority vested in the President by section 271 of title 10 of the United States Code to prescribe regulations for the screening of units and members of the Ready Reserve of the Armed Forces.

SEC. 2. Executive Order No. 10651 of January 6, 1956, is revoked.

LYNDON B. JOHNSON

THE WHITE HOUSE,
December 29, 1964.

[F.R. Doc. 64-13542; Filed, Dec. 30, 1964; 1:30 p.m.]

Rules and Regulations

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Airspace Docket No. 63–AL–29]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS [NEW]

PART 75—ESTABLISHMENT OF JET ROUTES [NEW]

Establishment of Jet Routes and Designation of Reporting Points, Alteration of Continental Control Area, Revocation and Alteration of Transition Areas

On August 27, 1964, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (29 F.R. 12317) stating that the Federal Aviation Agency was considering amendments to Part 71 [New] and Part 75 [New] of the Federal Aviation Regulations that would make applicable to Alaska changes in the vertical extent of the airway structure similar to those recently effectuated in the 48 contiguous states by Airspace Docket No. 63–WA–74 (29 F.R. 8471).

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. All comments received were favorable. Responses made to inquiries from air carriers included an assurance that airline jet operations would not be confined to the jet route structure.

The Notice stated that the Agency proposed the designation of control areas associated with jet routes outside the continental control area by adding to § 71.161 segments of Jet Routes No. 111 and 501. Segments of Jet Routes No. 115 from King Salmon, Alaska, to Anchorage, Alaska, and No. 122 from Galena, Alaska, to Nome, Alaska, were omitted because the offshore portions of these routes lie substantially within presently designated control areas. It has since been determined that a designation of these offshore control areas associated with jet routes should be independent of existing control areas, therefore, such action is taken in this rule. The Administrator has found that notice and public procedure on the inclusion of these control areas in § 71.161 is unnecessary because the public is not particularly interested in the designation of the offshore portion of these segments which are otherwise substantially included within controlled airspace.

The Notice proposed alignment of Jet Route No. 502 in part from Pon Lake, Yukon Territory, RBN, via Haines, Alaska, RBN. The Canadian Department of Transport has requested alignment of this segment from Snag, Yukon Territory, RR, via Haines RBN. This redescription will not alter the alignment of this jet route segment within the United States, therefore such action is taken herein.

Amendments (a), (b), (e), and (f) revise the relevant sections of Part 71. The other amendments and amendment (f) alter the airspace designations that are published separately in the FEDERAL REGISTER due to their length and complexity.

In consideration of the foregoing, Parts 71 [New] and 75 [New] of the Federal Aviation Regulations are amended as hereinafter set forth, effective 0001 e.s.t., March 4, 1965.

These amendments are issued under the authority of sections 307 and 1110 of the Federal Aviation Act of 1958 (49 U.S.C. 1348 and 1510) and Executive Order 10854 (24 F.R. 9565).

Issued in Washington, D.C., on December 24, 1964.

N. E. HALABY,
Administrator.

(a) In § 71.5(c)(1) "Alaska and" is deleted.

(b) Section 71.9 is amended to read as follows:

§ 71.9 Continental control area.

The continental control area consists of the airspace of the 48 contiguous states, the District of Columbia, and Alaska south of latitude 68°00'00" N., excluding the Alaska peninsula west of longitude 160°00'00" W., at and above 14,500 feet MSL, but does not include—

(a) The airspace less than 1,500 feet above the surface of the earth; or

(b) Prohibited and restricted areas, other than restricted area military climb corridors and the restricted areas listed in Subpart D of this part.

(c) Section 71.151 (29 F.R. 17550) is amended by adding the following restricted areas:

R–2202 Big Delta, Alaska.
R–2203A Eagle River, Alaska.
R–2203B Eagle River, Alaska.
R–2205 Yukon, Alaska.

(d) Section 71.161 (29 F.R. 17552) is amended by adding the following:

Jet Route No. 111, from Nome, Alaska, to McGrath, Alaska.
Jet Route No. 115, from King Salmon, Alaska, via Kenai, Alaska, to Anchorage, Alaska.
Jet Route No. 122, from Galena, Alaska, to Nome, Alaska.
Jet Route No. 501, from the United States/Canadian border, via Yakutat, Alaska, to Anchorage, Alaska.

(e) Section 71.211 (29 F.R. 17723) is amended to read as follows:

§ 71.211 Alaskan low altitude reporting points.

The reporting points listed below are designated up to but not including 18,000 feet MSL.

(No change in listing.)

(f) Section 71.213 (29 F.R. 17725) is amended to read as follows:

§ 71.213 Alaskan high altitude reporting points.

The reporting points listed below are designated at 18,000 feet MSL to Flight Level 450.

Adak, Alaska, RR.
Anchorage, Alaska.
Annette Island, Alaska, RR.
Bethel, Alaska.
Biorka Island, Alaska.
Cold Bay, Alaska, RR.
Crab INT: INT 227° bearing King Salmon, RR, 314° bearing Port Heiden, Alaska, RBN.
Dillingham, Alaska.
Domestic Sitka INT: INT Biorka Island, Alaska, 207° radial and centerline Middleton Island-Sandspit route at latitude 55°42' N., longitude 136°36' W.
Domestic Yakutat INT: INT Yakutat, Alaska, 215° radial and centerline Middleton Island-Sandspit route at latitude 57°52' N., longitude 141°46" W.
Fairbanks, Alaska, RR.
Fluke INT: INT 239° bearing Bethel, Alaska, RR, 311° bearing Cape Newenham, Alaska, RBN.
Fort Yukon, Alaska.
Galena, Alaska.
Gar INT: INT 263° bearing King Salmon, Alaska, RR, 131° bearing Cape Newenham, Alaska, RBN.
Glacier INT: INT Nenana, Alaska, 192° radial, NW course Summit, Alaska, RR.
Haines, Alaska.
Herring INT: INT 248° bearing King Salmon, Alaska, RR, 131° bearing Cape Newenham, Alaska, RBN.
Kenai, Alaska.
King Salmon, Alaska.
Kotzebue, Alaska, RBN.
McGrath, Alaska.
Middleton Island, Alaska.
Nenana, Alaska.
Nome, Alaska.
Northway, Alaska, RR.
Petersburg, Alaska, RR.
Shemya, Alaska, RBN.
Talkeetna, Alaska.
Yakutat, Alaska.
Yakutat, Alaska, RR.

(g) In § 75.100 (29 F.R. 17776) the following jet routes are added or amended to read:

Jet Route No. 111 (Nome, Alaska, to Middleton Island, Alaska), from Nome, Alaska, via McGrath, Alaska; Anchorage, Alaska; to Middleton Island, Alaska.
Jet Route No. 115 (King Salmon, Alaska, to Nenana, Alaska), from King Salmon, Alaska, via Kenai, Alaska; Anchorage, Alaska; Talkeetna, Alaska; to Nenana, Alaska.

Jet Route No. 117 (McGrath, Alaska, to Kotzebue, Alaska), from McGrath, Alaska, via Galena, Alaska; to Kotzebue, Alaska, RBN.

Jet Route No. 120 (Bethel, Alaska, to Fort Yukon, Alaska), from Bethel, Alaska, via McGrath, Alaska; Nenana, Alaska; Fairbanks, Alaska, RR; to Fort Yukon, Alaska.

Jet Route No. 122 (Nenana, Alaska, to Nome, Alaska), from Nenana, Alaska, via Galena, Alaska; to Nome, Alaska.

Jet Route No. 124 (Dillingham, Alaska, to Anchorage, Alaska), from Dillingham, Alaska, to Anchorage, Alaska.

Jet Route No. 501 (Seattle, Washington, to Bethel, Alaska). (Joins Canadian High Level Airway No. 501.) From Seattle, Wash., to the INT of the Seattle 331° radial and the United States/Canadian border. From Sandspit B.C. RR, via Biorka Island, Alaska; Yakutat, Alaska; Anchorage, Alaska; to Bethel, Alaska, excluding that airspace within Canadian territory.

Jet Route No. 502 (Fairbanks, Alaska, to United States-Canadian border). (Joins Canadian High Level Airways No. 515 and 502.) From Fairbanks, Alaska, RR, via Northway, Alaska, RR; Snag, Yukon Territory, RR; Haines, Alaska, RBN; Petersburg, Alaska, RR; Annette Island, Alaska, RR; to Ethelda Bay, B.C., RBN, excluding that airspace within Canadian territory.

Jet Route No. 507 (Northway, Alaska, to Yakutat, Alaska), from Northway, Alaska, RR, to Yakutat, Alaska, excluding airspace within Canadian territory.

(h) § 71.181 (29 F.R. 17643) is amended as hereinafter set forth.

(1) The Anchorage, Alaska transition area is amended to read:

ANCHORAGE, ALASKA

That airspace extending upward from 14,500 feet MSL within a 172-mile radius of the Anchorage VOR. The portions within the United States, Federal airways, Control 1218, Control 1310, the Cordova, Alaska, and Middleton Island, Alaska, control area extensions, the King Salmon transition area and the Anchorage Oceanic Control area would be excluded.

(2) The King Salmon, Alaska transition area is amended to read:

KING SALMON, ALASKA

That airspace extending upward from 1,200 feet above the surface within a 25-mile radius of the King Salmon Airport (latitude 58°41' N., longitude 156°39' W.) and within 47 miles SW and 15 miles NE of the 312° bearing from the King Salmon RR, extending from the RR to 85 miles NW; and that airspace extending upward from 14,500 feet MSL outside of the United States within a 172-mile radius of the King Salmon VOR. Federal airways, Control 1217, Control 1400, Control 1401, Control 1484, the Kodiak, Alaska, control area extension and the Anchorage control area extension are excluded from the portion extending upward from 14,500 feet MSL.

(3) The Fairbanks, Alaska transition area is revoked.

[F.R. Doc. 64-13448; Filed, Dec. 30, 1964; 8:45 a.m.]

[Docket Nos. 3059, 5033, 5036, 5094, 6161, 6258; Amdt. 1-7]

PART 1—DEFINITIONS AND ABBREVIATIONS

PART 40—SCHEDULED INTERSTATE AIR CARRIER CERTIFICATION AND OPERATION RULES

PART 41—CERTIFICATION AND OPERATION RULES FOR CERTIFICATED ROUTE AIR CARRIERS ENGAGING IN OVERSEAS AND FOREIGN AIR TRANSPORTATION AND AIR TRANSPORTATION WITHIN HAWAII AND ALASKA

PART 42—AIRCRAFT CERTIFICATION AND OPERATION RULES FOR SUPPLEMENTAL AIR CARRIERS, COMMERCIAL OPERATORS USING LARGE AIRCRAFT, AND CERTIFICATED ROUTE AIR CARRIERS ENGAGING IN CHARTER FLIGHTS OR OTHER SPECIAL SERVICES

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT [NEW]

This amendment adds Part 121 to the Federal Aviation Regulations to replace Civil Air Regulations Parts 40, 41, and 42 and certain Special Civil Air Regulations. This amendment completes the Agency recodification program announced in Draft Release 61-25, published in the FEDERAL REGISTER on November 15, 1961 (26 F.R. 10698).

Part 121 was published as a notice of proposed rule making in the FEDERAL REGISTER on August 26, 1964 (29 F.R. 12182) and given further circulation as Notice No. 64-40. As stated in that notice, this Part 121 is basically a consolidation of the rules presently contained in CAR Parts 40, 41, and 42 and is in most cases identical with the proposed recodification of those Parts as issued in separate notices of proposed rule making (proposed Part 121 (CAR 40) published in the FEDERAL REGISTER on May 9, 1964 (29 F.R. 620); proposed Part 123 (CAR 41) published in the FEDERAL REGISTER on January 25, 1964 (29 F.R. 1348); and proposed Part 125 (CAR 42) published in the FEDERAL REGISTER on May 8, 1964 (29 F.R. 6112)).

Comments were received from: the Civil Aeronautics Board; Seaboard World Airlines, Inc.; the Air Line Pilots Association, International; the National Air Carriers Association, Inc.; the Helicopter Association of America; the Air Transport Association of America; and Aerospace Industries Association of America, Inc.

Some of the comments received recommended specific substantive changes to the regulations. Although some of these recommendations appear to be meritorious, they cannot be adopted as a part of the recodification program. The purpose of the program is simply to streamline and clarify present regulatory language and delete obsolete or redundant provisions. To attempt substantive changes, other than relaxatory ones that are completely noncontroversial, would delay the project and be contrary to the ground rules specified for it in Draft Release 61-25. However, all substantive comments received will be retained and will be given careful consideration in future regulatory projects.

Throughout Part 121 there are references to other recodified Federal Aviation Regulations such as the reference in § 121.181(c)(1) to airplanes "certificated under Part 25". In a recodification program, such a reference automatically includes the predecessors to the new parts and therefore it is unnecessary to include a reference to former part numbers. This policy has been followed throughout the recodified regulations. As a consequence, references to Federal Aviation Regulations include their CAR predecessors unless otherwise specifically stated.

Section 121.11 has been rewritten to delete the reference to Part 91 of the Federal Aviation Regulations and also the requirement that certain certificate holders must comply with the ICAO rules when over the high seas. These provisions are deleted since they simply repeat requirements already contained in Part 91 which is applicable to all aircraft, including air carrier aircraft.

One comment stated that the wording of § 121.119(b) would require supplemental air carriers and commercial operators to "prepare forecasts", which is not the intent of CAR § 42.35. Sections 121.101 and 121.119 have been rewritten to make it clear than an air carrier or commercial operator may use forecasts prepared by someone else provided they are prepared from weather reports that meet the stated requirements.

Section 121.189 has been completely rewritten to avoid any implication that the "net takeoff flight path" includes the "minimum distance required for takeoff". Also a new paragraph has been added stating that for the purposes of the section, the terms "takeoff distance, takeoff run, net takeoff flight path, and takeoff path" have the meanings set forth in the rules under which the airplane was certificated. Most of these terms were defined differently in SRs 422, 422A, and 422B and the inclusion of this statement preserves the different definitions for the purposes of this section while avoiding repeating each definition within the section.

Section 121.185(a)(1): Subparagraph (1) of § 121.185(a) has been rewritten to read "The airplane is landed on the most

favorable runway and direction in still air". This is the language presently contained in § 40.77 and is also consistent with § 121.195(b)(1) that is based on the SR 422 series.

Section 121.351 has been rewritten to include a paragraph (b) that reflects paragraph (b) of CAR §§ 41.233 and 42.-233. While the revision note to this section in the notice indicated that it reflected all of §§ 40.233, 41.233, and 42.233, these provisions were inadvertently omitted in the notice of proposed rule making.

Section 121.369(b)(2) has been amended to delete the words "preventive maintenance". This paragraph requires the maintenance manual to include a designation of the items of maintenance and alteration that must undergo "required inspections". Since no "preventive maintenance" item is required to undergo a "required inspection," the term may be deleted here.

Section 121.377 has been amended to limit its applicability to "within the United States, its territories, and possessions". This section is now consistent with the regulations upon which it is based.

Section 121.441(b)(24) has been amended to reflect a part of CAM 40.302-1(q). Subparagraph (24) is based on CAR §§ 40.302(b)(2)(ii), 41.302(b)(2)(ii), and 42.302(b)(2)(ii). It provides that certain flight maneuvers required for the proficiency check may be given in a synthetic trainer but that maneuvers associated with approach procedures for which the lowest minimums are approved must be given in flight. The CAM provision contained a further exception for an air carrier authorized landing minimums based on instrument landing systems and ground control approach. For such a carrier only the maneuvers related to the predominant landing aid on a system wide basis need be given in flight. CAR Parts 41 and 42 before their recent revision contained comparable CAM provisions that were dropped in the revised parts. The Agency believes that this relaxation has worked well in the past and since the deletion of this provision was not based on any Agency finding that safety was involved, that it should be restored.

Section 121.523 reflects the amendment to § 42.322(c) (42.14) published in the FEDERAL REGISTER on December 11, 1964 (29 F.R. 16968).

Section 121.533 (based on § 40.351) has been amended to include a paragraph stating the authority of the pilot in command over other crewmembers during flight time. This paragraph is comparable to the provisions of § 121.535(d) and 121.537(d) which are based on §§ 41.531 and 42.531, respectively. While § 40.531 did not contain this statement as a rule, it was included in the regulation in a note as an interpretation of § 40.531(c).

A new § 121.537 has been added to include the provisions of §§ 40.373, 41.373, and 42.373 related to the closing and locking of the flight crew compartment door during flight. These sections were added to CAR Parts 40, 41, and 42 by amendments 40-45, 41-10, and 42-9, respectively, effective August 6, 1964.

One comment requested that § 121.555 be amended to reflect the deviation authority contained in the .359 sections of CARs 40, 41, and 42. Each of these sections began with the clause "Except when a deviation is necessary in accordance with § 40. (41 or 42) 360, a pilot * * *". The .360 sections contained the emergency situation provisions reflected in § 121.557. Since the emergency provisions authorizing a pilot to deviate from the requirements of the FARs "to the extent required in the interests of safety" apply across the board, it is not necessary to specifically state that deviation authority in § 121.555. In fact, to specifically state the authority in any individual section would raise a question as to the applicability of § 121.557 to other sections where no such statement is contained.

Section 121.647 has been rewritten to state that each person computing fuel requirements shall "consider" certain listed items. "Consider" more closely reflects the requirements of CAR §§ 40.397, 41.397, and 42.397 than did the words "take into account" which were contained in the notice of proposed rule making.

The term "restricted area" used in § 121.649 has been replaced by the phrase "area of local surface visibility restriction". This change was made to avoid any confusion with a "restricted area" as defined in Part 1 and used in Part 73.

A new Subpart W has been added to include the provisions of § 406.19 of the Regulations of the Administrator. That section established crewmember certificates to be issued to crewmembers of United States registered aircraft engaged in international air commerce. The certificates are issued under Annex 9, as amended, to the Convention on International Civil Aviation, to facilitate the entry and clearance of the crewmembers into ICAO contracting States.

Part 121 includes the miscellaneous amendments to CAR Parts 40, 41, and 42 proposed in Notice No. 64-32 published in the FEDERAL REGISTER on May 28, 1964 (29 F.R. 7026). As indicated in that notice, the proposed changes were of a minor substantive nature and would remove unjustified differences in CAR Parts 40, 41, and 42 that would facilitate the recodification of those Parts. With the exception of three items discussed below, the comments received by the Agency either supported the proposed changes or offered no objection thereto.

Section 40.15 (§ 121.73): The amendment to this section requires a domestic air carrier to keep its operations specifications available for inspection at its principal operations office. Section 40.15 currently requires only that the carrier's operating certificate be kept so available. However, the comparable provisions of Parts 41 and 42 include the operations specifications. The Air Transport Association of America (ATA) objected to this proposed amendment on the ground that it would place an unwarranted burden on those air carriers who have separate operations and maintenance bases and who presently keep the appropriate portion of the operations specifications at the appropriate base. The Agency does not agree that this amendment places any additional burden on a carrier. CAR § 40.20 currently requires that "a set of specifications shall be maintained by the air carrier as a separate and complete document." Therefore this amendment would merely require that the separate and complete document required by § 40.20 be kept at the carrier's principal operations office. If the carrier wishes to separate the operations specifications between the maintenance and operations bases, copies of the pertinent portions can easily be furnished by it to each base.

Section 41.302 (§ 121.441): The ATA objected to that part of the proposed amendment to this section that would prohibit a pilot who has unsatisfactorily performed a proficiency check from being used in air carrier operations until he has satisfactorily passed such a check. The ATA contends that this requirement would be burdensome in the case of incomplete checks due to traffic, weather, etc. in which there is insufficient time for additional training and rechecking of the pilot. The Agency realizes that there conceivably could be instances where due to traffic control, weather, or some similar problem, a check could be interrupted and this rule could cause some hardship. However, the Agency feels strongly that a pilot who has failed some part of his proficiency check should not be allowed to return to scheduled flight until he has satisfactorily completed that check. The hardship that could be caused by one of the possibilities discussed above does not, in our opinion, overcome the potential safety hazard that could result if this proposed amendment were withdrawn.

Section 42.396 (§ 121.643): While ATA had no objection to the Agency's proposed amendment to § 42.396, it requested that a relaxatory change be made in this section pertaining to certain charter or off-route flights into Canada. However, since some of these flights are into remote areas of Canada, it is considered that the present fuel requirements should continue to apply to these operations.

Paragraph (c) of § 121.701 has been deleted as proposed in Notice No. 64-48 published in the FEDERAL REGISTER on October 17, 1964 (29 F.R. 14367). Several of the comments received from certain pilots, flight engineers, and aircraft mechanics organizations stated that the posting of the time since last overhaul of the engines in the maintenance log was important to the flight crew. These comments are essentially the same as the comments received from these organizations in connection with Notice No. 63-20 that were discussed in Notice No. 64-48. The Agency had considered these comments before this notice was issued and still believes that this requirement is not necessary and that if a flight crew desires this information it may be obtained from other records.

This amendment adds to Part 1 definitions of "air carrier", "commercial operator", and "show". If additional defi-

nitions prove to be necessary they will be added as needed. It should be noted that all of the definitions, abbreviations, and rules of construction contained in Part 1 apply to Part 121.

This amendment deletes CAR Parts 40, 41, and 42 and Special Civil Air Regulations 422, 422A, 422B, 425C, and 446B.

Other minor changes of a technical nature have been made. They are not substantive and do not impose any burden on regulated persons.

Interested persons have been afforded an opportunity to participate in the making of this regulation, and due consideration has been given to all relevant matter presented. As previously stated this amendment is the final part of the Agency's recodification project begun in 1961. The Agency wishes to thank those persons who submitted comments on this notice and on all other parts of the recodification program. The completion of this program would have been impossible without the constant cooperation of the many aviation associations and individuals interested in aviation who have submitted their comments throughout the program.

In consideration of the foregoing, Chapter I of Title 14 of the Code of Federal Regulations is amended as hereinafter set forth effective April 1, 1965.

1. By amending Part 1 by adding the definitions to § 1.1 as follows:

§ 1.1 General definitions.

* * * * *

"Air carrier" means a person who undertakes directly by lease, or other arrangement, to engage in air transportation.

* * * * *

"Commercial operator" means a person who engages in the carriage by aircraft in air commerce of persons or property as a major enterprise for profit, and not merely incidental to his other business, other than as an air carrier or foreign air carrier or under the authority of Part 375 of this title.

* * * * *

"Show", unless the context otherwise requires, means to show to the satisfaction of the Administrator.

* * * * *

2. By striking out Parts 40, 41, and 42 and Special Civil Air Regulations 422, 422A, 422B, 425C, and 446B.

3. By adding a Part 121 [New] reading as hereinafter set forth:

This amendment is made under the authority of secs. 313(a), 501, 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502).

Issued in Washington, D.C., on December 23, 1964.

N. E. HALABY,
Administrator.

Subpart A—General

Subpart B—Certification Rules for Domestic and Flag Air Carriers

Subpart C—Certification Rules for Supplemental Air Carriers and Commercial Operators

Subpart D—Rules Governing All Certificate Holders Under This Part

Subpart E—Approval of Routes; Domestic and Flag Air Carriers

Subpart F—Approval of Areas and Routes for Supplemental Air Carriers and Commercial Operators

Subpart G—Manual Requirements

Subpart H—Aircraft Requirements

Subpart I—Airplane Performance Operating Limitations

Subpart J—Special Airworthiness Requirements

AUTHORITY: The provisions of this Part 121 issued under secs. 313(a), 501, 601 through 610, and 1102, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421 through 1430, and 1502.

Subpart A—General

§ 121.1 Applicability.

(a) Except as prescribed in paragraph (b) of this section, this part prescribes rules governing the certification and operations of the following:

(1) Each air carrier engaging in interstate or overseas air transportation under a certificate of public convenience and necessity or other appropriate economic authority issued by the CAB.

(2) Each air carrier engaging in foreign air transportation under a certificate of public convenience and necessity or other appropriate economic authority issued by the CAB.

(3) Each air carrier covered by subparagraph (1) or (2) of this paragraph when engaging in charter flights or other special service operations.

(4) Each supplemental air carrier when it engages in the carriage of persons or property in air commerce for compensation or hire.

(5) Each commercial operator.

(b) This part does not apply to operations conducted under Part 127, Part 133, or Part 135.

(c) In addition, this part prescribes rules governing—

(1) Each person employed or used by an air carrier or commercial operator in operations under this part, including the maintenance, preventive maintenance and alteration of aircraft; and

(2) Each person who is on board an aircraft being operated under this part.

(d) For the purpose of determining whether a person is a commercial operator under this part, operations are considered to be for compensation or hire when they are a major enterprise for profit and not merely incidental to the person's other business.

(e) For the purpose of this part, "passenger-carrying aircraft" or "passenger-carrying operation" means one carrying any person other than a flight crewmember or other crewmember, company employee, authorized government representative, or person accompanying a shipment.

§ 121.3 Certification requirements: general.

(a) Except as provided in paragraph (b) of this section, no person may engage in scheduled interstate air transportation within the 48 contiguous States or the District of Columbia without, or in violation of, a domestic air carrier operating certificate and appropriate

operations specifications issued under this part. An air carrier holding such a certificate is hereafter in this part referred to as a "domestic air carrier".

(b) The Administrator may authorize any air carrier holding authority to engage in scheduled cargo operations under Title IV of the Federal Aviation Act to conduct those operations under the certification and operation rules applicable to carriers covered by paragraph (e) of this section.

(c) Except as provided in paragraph (d) of this section, no person may engage in scheduled air transportation, other than that described in paragraph (a), without, or in violation of, a flag air carrier operating certificate and appropriate operations specifications issued under this part. An air carrier holding such a certificate is hereafter in this part referred to as a "flag air carrier".

(d) A domestic air carrier may, in the case of segments of routes extending outside the 48 contiguous States and the District of Columbia, be authorized to conduct operations over those route segments under the domestic air carrier certification and operation rules.

(e) No person may engage in air transportation (other than that described in paragraph (a) or (c) of this section) without, or in violation of, a supplemental air carrier certificate and appropriate operations specifications issued under this part. An air carrier holding a supplemental air carrier certificate is hereafter in this part referred to as a "supplemental air carrier".

(f) No person (except a person covered by paragraph (a), (b), (c), (d), or (e) of this section) may engage in the carriage of persons or property for compensation or hire in air commerce without, or in violation of a commercial operator certificate and appropriate operations specifications issued under this part.

(g) A domestic or flag air carrier or an air carrier holding a certificate under Part 127 is not eligible for or required to obtain a separate certificate for operations under paragraph (e) or (f) of this section, but must obtain authority to conduct those operations by appropriate amendments to its operations specifications.

§ 121.5 Charter flights or other special service operation: flag and domestic air carriers.

Each flag or domestic air carrier, or air carrier holding an operating certificate under Part 127 shall conduct the following operations under the rules of this part applicable to supplemental air carriers and commercial operators:

(a) Any charter flight or other special service conducted over routes into airports listed in its operations specifications, unless the air carrier obtains authority from the Administrator to conduct those operations under the rules that would otherwise apply to that air carrier's operations.

(b) Any charter flight or other special service that involves, in whole or in part, off-route operations.

§ 121.7 Intrastate common carriage by commercial operator.

An applicant for a commercial operator certificate, or a commercial operator, who carries or intends to carry passengers for compensation or hire as a common carrier between two points entirely within any State with the frequency set forth in paragraph (a) or (b) of this section shall show that it is able to, and will conduct, those operations under the rules applicable to domestic air carriers or any other rules that the Administrator finds to be necessary to provide an appropriate level of safety for the operation:

(a) Two flights, or one round trip a week on the same day or days of the week for eight or more weeks in any 90 consecutive days.

(b) A total of 36 or more flights or 18 or more round trips in any 90 consecutive days.

§ 121.9 Certain operations of small aircraft.

Upon application, the Administrator may issue operations specifications to an air carrier conducting operations under this part, authorizing it to conduct operations with small aircraft under Part 135 if he finds that safety in air transportation and the public interest allows it. Operations specifications issued under this section contain such operating limitations and requirements as the Administrator finds necessary.

§ 121.11 Additional rules applicable to operations subject to this part: flag air carriers, supplemental air carriers, and commercial operators.

Each flag air carrier, supplemental air carrier, and commercial operator shall while operating an airplane within a foreign country, comply with the air traffic rules of the country concerned and local airport rules, except where any rule of this part is more restrictive and may be followed without violating the rules of that country.

§ 121.13 Rules applicable to helicopter operations: deviation authority.

(a) Each person operating a helicopter under this part shall comply with §§ 121.5, 121.9, 121.11, Subpart C (except holders of certificates under Part 127), Subpart F (except holders of certificates under Part 127), Subpart G, 121.153, 121.155, 121.157(e), 121.163, 121.315, Subpart L, 121.383, 121.385, 121.433, 121.435, 121.437, 121.501, 121.533 through 121.563, 121.567, 121.575, 121.597, 121.599, 121.603, 121.609, 121.611 through 121.617, 121.623 through 121.631, 121.647, 121.653, 121.655, 121.657, 121.659, 121.665, 121.667, and Subpart V.

(b) In addition to the rules of this part listed in paragraph (a) of this section, each person operating a helicopter shall comply with §§ 127.81, 127.83, 127.91, 127.93, 127.101 through 127.117, 127.119, 127.121, 127.123, 127.125, 127.145, 127.151 through 127.161, 127.171 through 127.177, 127.231 through 127.261, and 127.301 through 127.319.

(c) The Administrator may issue operations specifications authorizing a deviation from any specific requirement for helicopter operations if he finds that the deviation provides a substantially equivalent standard of safety.

Subpart B—Certification Rules for Domestic and Flag Air Carriers

§ 121.21 Applicability.

This subpart prescribes certification rules for domestic air carriers and flag air carriers.

§ 121.23 Operations specifications not a part of certificate.

Except for those operations specifications specifying airport and route or route segment authorizations, air carrier operations specifications are not a part of an air carrier's operating certificate.

§ 121.25 Contents of certificate and operations specifications.

(a) Each domestic and flag air carrier operating certificate contains the following:

(1) The air carrier's name.

(2) The airports to and from which it may operate.

(3) The approved routes over which it may operate.

These airports and routes are incorporated into the air carrier operating certificate by reference to the authorized airports and approved routes listed in that air carrier's operations specifications.

(b) Each air carrier's operations specifications contain the following:

(1) The kinds of operations authorized.

(2) The types of airplanes authorized for use.

(3) En route authorizations and limitations.

(4) Airport authorizations.

(5) Airport limitations.

(6) Time limitations, or standards for determining time limitations, for overhauls, inspections, and checks of airframes, engines, propellers, and appliances.

(7) Procedures for control of weight and balance of airplanes.

(8) Interline equipment interchange requirements, if relevant.

(9) Any other item that the Administrator determines is necessary to cover a particular situation.

§ 121.27 Issue of certificate.

(a) An applicant under this subpart is entitled to an operating certificate if—

(1) He holds a certificate of public convenience and necessity or other appropriate economic authority issued by the Civil Aeronautics Board; and

(2) The Administrator, after investigation, finds that the applicant is properly and adequately equipped and able to conduct a safe operation in accordance with this part and operations specifications issued under this part.

(b) In the case of operations conducted under the rules of this Part applicable to domestic air carriers in small airplanes, or conducted under a temporary authorization issued by the Civil Aeronautics Board, the Administrator issues operations specifications

prescribing appropriate requirements that deviate from the requirements of this part whenever, after investigation, he finds that general standards of safety for such an operation require or allow a deviation from such a requirement for a particular operation or class of operations for which an application for an air carrier operating certificate has been made.

(c) Whenever, after investigation, the Administrator determines that the general standards of safety for flag air carrier operations conducted—

(1) Between points in Alaska; or

(2) Under a temporary authorization issued by the Civil Aeronautics Board; require or allow a deviation from any requirement of this part for a particular operation or class of operations for which an application for an air carrier operating certificate has been made, he issues operations specifications prescribing appropriate requirements that deviate from the requirements of this Part.

§ 121.29 Duration of certificate.

(a) An air carrier operating certificate issued under this subpart is effective until termination of the certificate of public convenience and necessity or other economic authority issued by the Civil Aeronautics Board to the air carrier or until it is surrendered or the Administrator suspends, revokes, or otherwise terminates it.

(b) If the Administrator suspends or revokes such an air carrier operating certificate, the holder of that certificate shall return it to the administrator.

Subpart C—Certification Rules for Supplemental Air Carriers and Commercial Operators

§ 121.41 Applicability.

This subpart prescribes certification rules for supplemental air carriers and commercial operators.

§ 121.43 Operations specifications not a part of certificate.

Operations specifications are not a part of a supplemental air carrier or commercial operator operating certificate.

§ 121.45 Contents of certificate and operations specifications.

(a) Each certificate issued under this subpart contains the following:

(1) The holder's name.

(2) A description of the operations authorized.

(3) The date it is issued and the date it terminates.

(b) The operations specifications issued under this subpart contain the following:

(1) The kinds of operations authorized.

(2) The types and registration numbers of aircraft authorized for use.

(3) En route authorizations and limitations, including areas of operation.

(4) Special airport authorizations.

(5) Special airport limitations.

(6) Time limitations, or standards for determining time limitations, for overhauls, inspections, and checks of airframes, aircraft engines, propellers, and appliances.

(7) Procedures for control of weight and balance of aircraft.

(8) Any other item that the Administrator determines is necessary to cover a particular situation.

§ 121.47 Application for supplemental air carrier and commercial operator certificates.

(a) Each applicant for the original issue or renewal of a supplemental air carrier or commercial operator certificate must submit his application, in a form and manner prescribed by the Administrator, to the FAA Air Carrier District Office in whose area the applicant proposes to establish or has established its principal operations base, at least 60 days before the date of intended operations, or in the case of a renewal application, at least 60 days before the expiration date of the certificate.

(b) Each application submitted under paragraph (a) of this section must contain a signed statement showing the following:

(1) For corporate applicants:

(i) The name and address of each stockholder who owns five percent or more of the total voting stock of the corporation, and if that stockholder is not the sole beneficial owner of the stock, the name and address of each beneficial owner. An individual is considered to own the stock owned, directly or indirectly, by or for his spouse, his children, his grandchildren, or his parents.

(ii) The name and address of each director and each officer, and each person employed or who will be employed in a management position described in § 121.59.

(iii) The name and address of each person directly or indirectly controlling or controlled by the applicant, and each person under direct or indirect control with the applicant.

(2) For non-corporate applicants:

(i) The name and address of each person having a financial interest therein and the nature and extent of that interest.

(ii) The name and address of each person employed or who will be employed in a management position described in § 121.59.

(c) In addition, each applicant for the original issue or renewal of a commercial operator certificate must submit with the application a signed statement showing—

(1) The financial information listed in § 121.49; and

(2) The nature and scope of its intended operation, including the name and address of each person, if any, with whom the applicant has a contract to provide services as a commercial operator and the scope, nature, date, and duration of each of those contracts.

(d) Each applicant for, or holder of, a certificate issued under this subpart, shall notify the Administrator within 10 days after—

(1) A change in any of the persons, or the names and addresses of any of the persons, submitted to the Administrator under paragraph (b) (1) or (2) of this section; or

(2) A change in the financial information submitted to the Administrator under § 121.49 that occurs while the application for the issue or renewal is pending before the FAA and that would make the applicant's financial situation substantially less favorable than originally reported.

§ 121.49 Commercial operator: financial information required.

(a) Each applicant for the original issue or renewal of a commercial operator certificate must submit the following financial information:

(1) A balance sheet that shows assets, liabilities, and net worth, as of a date not more than 60 days before the date of application.

(2) In the case of an application for renewal, a profit and loss statement for a fiscal year ending on a date not more than 60 days before the date of the application, with separation of items relating to applicant's commercial operator activities from his other business activities. The applicant shall submit a listing and brief description of the nature and scope of the commercial operator contracts that gave rise to the operating income shown on the profit and loss statement, including the names of the contracting parties and the date and duration of each contract. However, if the applicant's regular fiscal year for income tax purposes ends on a date more than 60 days before the date of application, the applicant may submit a profit and loss statement covering its normal fiscal year, plus a supplementary profit and loss statement for the period from the end of the regular fiscal year to a date not more than 60 days before the date of application.

(3) An itemization of over-due liabilities showing amounts, names and addresses of creditors, description of indebtedness, and due date of obligations.

(4) An itemization of claims in litigation against the applicant showing the amounts claimed, the name and address of each claimant, and a description of each claim.

(5) A detailed analysis covering the first three months of the proposed operation after the possible issue or renewal of the certificate applied for that shows—

(i) Estimated amount and source of both operating and non-operating revenue, including identification of its existing and anticipated income producing contracts and estimated revenue per mile or hour of operation by aircraft type;

(ii) Estimated amount of operating and non-operating expenses by expense objective classification; and

(iii) Estimated profit or loss.

(6) An estimate of the cash that will be needed during the first three months of the proposed operation after the possible issue or renewal date of the certificate applied for to cover—

(i) Acquisition of property and equipment;

(ii) Retirement of debt;

(iii) Additional working capital;

(iv) Operations (losses); and

(v) Other (explain).

(7) An estimate of the cash that will be available from the following sources during the first three months of the pro-

posed operation after the possible issue or renewal of the certificate applied for that shows—

(i) Sale of property or flight equipment;

(ii) New debt;

(iii) New equity;

(iv) Working capital reduction;

(v) Operations (profits);

(vi) Depreciation and amortization; and

(vii) Other (explain).

(8) Any other financial information the Administrator requires to enable him to determine that the applicant has sufficient financial resources to conduct its operations with the degree of safety required in the public interest.

(b) Each financial statement filed with the FAA under this part must be based on accounts prepared and maintained on an accrual basis in accordance with generally accepted accounting principles applied on a consistent basis, and must contain the name and address of the applicant's public accounting firm, if any.

§ 121.51 Issue of certificate.

(a) An applicant for a certificate under this subpart is entitled to the certificate if he is a citizen of the United States and the Administrator, after investigation (including any necessary verification of financial and other information submitted) finds that the applicant—

(1) Holds the economic authority required by the Civil Aeronautics Board, if any;

(2) Is not disqualified under paragraph (b) of this section; and

(3) Is properly and adequately equipped and able to conduct a safe operation in accordance with the requirements of this part and the operations specifications provided for in this part.

(b) The Administrator may deny an application for a certificate under this subpart if he finds—

(1) That an air carrier or commercial operator certificate previously issued to the applicant was revoked;

(2) That a person who was employed in a management position similar to any listed under § 121.59 with (or has exercised control with respect to) any air carrier or commercial operator whose operating certificate has been revoked, will be employed in any of those positions or a similar position (or will be in control of or have a substantial ownership interest in the applicant), and that the person's employment or control contributed materially to the reasons for revoking that certificate; or

(3) In the case of an applicant for a commercial operator certificate, that for financial reasons the applicant is not able to conduct a safe operation.

§ 121.53 Duration of certificate.

(a) A certificate issued under this subpart is effective for one year unless the Administrator sooner suspends, revokes, or otherwise terminates it, or in the case of a supplemental air carrier, upon termination of the economic authority required by the Civil Aeronautics Board, if sooner.

(b) The Administrator may suspend or revoke a certificate under section 609 of the Federal Aviation Act of 1958 and the applicable procedures of Part 13 for any cause that, at the time of suspension or revocation, would have been grounds for denying an application for a certificate.

(c) If the Administrator suspends or revokes a certificate or it is otherwise terminated, the holder of that certificate shall return it to the Administrator.

§ 121.55 Commercial operator: supplemental periodic financial report.

(a) Each holder of a commercial operator certificate shall, within 45 days after his original or renewed certificate has been in effect for four months, submit a signed financial statement to the FAA that shows profit and loss for—

(1) The four-month period after the date the certificate was issued or renewed, as the case may be; and

(2) Any period immediately preceding the date of certificate issue or renewal not covered by the preceding financial statement filed under § 121.47(c)(1).

(b) Each holder shall submit a listing and brief description of the nature and scope of the contracts that gave rise to the operating income shown on the profit and loss statement, including the names of the contracting parties, and the date and duration of each contract. In addition, it shall submit all other information required for original issue of a certificate under § 121.47(c)(1).

§ 121.57 Obtaining waivers and authority for deviations.

(a) The Administrator may, upon application by the supplemental air carrier or commercial operator, authorize deviations from the applicable requirements of this part, by an appropriate amendment to the operations specifications, for military contract or for emergency operations. The Administrator may, at any time, terminate any grant of deviation authority or waiver issued under this section. Each supplemental air carrier and commercial operator authorized deviations under this section shall comply with the terms of the authorization when conducting operations affected thereby.

(b) If, in the case of military contracts, the Department of Defense certifies to the Administrator that an operation is essential to the national defense and requires a requested deviation, and the Administrator finds that the deviation is not based on an economic advantage or convenience to the air carrier or commercial operator or the United States, the Administrator may authorize deviations for—

(1) Operations conducted under a contract with an armed force as the primary contractor; or

(2) Operations conducted for an armed force under a subcontract with a primary contractor.

(c) In emergency conditions the Administrator may authorize deviations for operations if those conditions necessitate the transportation of persons or supplies for the protection of life or property, and he finds that a deviation is necessary for the expeditious conduct of the operation.

(d) The Administrator may, by an appropriate amendment to the operations specifications, waive, in whole or in part, submission of the financial information required from a commercial operator in a renewal application or supplemental periodic financial report if—

(1) Application for the waiver is filed at least 30 days before the information is due; and

(2) The Administrator finds that the submission is not required in the public interest, based on information as to the operator's—

(i) Financial standing;

(ii) Management; and

(iii) Kind of operations.

The filing of an application for a waiver under this paragraph does not automatically extend the time for submitting the required information.

§ 121.59 Management personnel required.

(a) Each applicant for a certificate under this subpart must show that it has enough qualified management personnel to provide the highest degree of safety in its operations and that those personnel are employed on a full-time basis in the following or equivalent positions:

(1) General manager.

(2) Director of operations (who may be the general manager if qualified).

(3) Director of maintenance.

(4) Chief pilot.

(5) Chief inspector.

(b) Upon application by the supplemental air carrier or commercial operator the Administrator may approve different positions or numbers of positions than those listed in paragraph (a) of this section for a particular operation if the air carrier or commercial operator shows that it can perform the operation with the highest degree of safety under the direction of fewer or different categories of management personnel due to—

(1) The kind of operation involved;

(2) The number and type of aircraft used; and

(3) The area of operations.

The title and number of positions so approved are set forth in the operations specifications of the air carrier or commercial operator.

(c) Each supplemental air carrier and commercial operator shall—

(1) Set forth the duties, responsibilities, and authority, of the personnel required by this section, in the general policy section of the air carrier manual or commercial operator manual;

(2) List in the manual the names and addresses of the persons assigned to those positions; and

(3) Within at least 10 days, notify the FAA Air Carrier District Office charged with the overall inspection of the air carrier or commercial operator, of any change made in the assignment of persons to the listed positions.

§ 121.61 Management personnel: qualifications.

(a) No person may serve as director of operations unless he knows the contents of the air carrier's or commercial operator's operations manual and operations specifications, and the provisions of this part necessary to the proper performance of his duties and—

(1) Holds, or has held, an airline transport pilot certificate and has had at least three years of experience as pilot in command of a large aircraft; or

(2) Has had at least three years of experience as director of operations, of an operation using large aircraft, or a position of comparable responsibility.

(b) No person may serve as chief pilot unless he—

(1) Holds a current airline transport pilot certificate with appropriate ratings for the type of aircraft used;

(2) Has had at least three years of experience as a pilot in command of a large aircraft with an air carrier or commercial operator; and

(3) Knows the contents of the air carrier's or commercial operator's manual and operations specifications, and the provisions of this part necessary to the proper performance of his duties.

(c) No person may serve as director of maintenance unless he—

(1) Holds a current mechanic certificate with either an airframe or powerplant rating, and has had at least five years of experience in the maintenance of large aircraft, one year of which must have been in a supervisory capacity; and

(2) Knows the maintenance parts of the air carrier's or commercial operator's manual and operations specifications and the applicable maintenance provisions of this part.

(d) No person may serve as chief inspector unless he—

(1) Holds a current mechanic certificate with both airframe and powerplant ratings, and has held these ratings for at least three years;

(2) Has had at least three years of diversified maintenance experience on large aircraft with an air carrier, commercial operator, or certificated repair station, one year of which must have been as a maintenance inspector; and

(3) Knows the maintenance parts of the air carrier's or commercial operator's manual and operations specifications, and the applicable maintenance provisions of this part.

Subpart D—Rules Governing All Certificate Holders Under This Part

§ 121.71 Applicability.

This subpart prescribes rules governing all certificate holders under this Part.

§ 121.73 Availability of certificate and operations specifications.

Each certificate holder shall make its operating certificate and operations specifications available for inspection by the Administrator at its principal operations office.

§ 121.75 Use of operations specifications.

(a) Each certificate holder shall keep each of its employees informed of the provisions of its operations specifications that apply to the employee's duties and responsibilities.

(b) Each certificate holder shall maintain a complete and separate set of its operations specifications. In addition, each certificate holder shall insert pertinent excerpts of its operations specifications, or reference thereto, in its manual in such a manner that they retain their identity as operations specifications.

§ 121.77 Amendment of certificate.

(a) The Administrator may amend an operating certificate issued under this Part—

(1) Upon application by the holder, if the Administrator determines that safety in air transportation (or in air commerce, in the case of a commercial operator) and the public interest allows the amendment; or

(2) Under section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429) and Part 13 of this chapter, if the Administrator determines that safety in air transportation (or in air commerce, in the case of a commercial operator) and the public interest requires the amendment.

(b) An applicant for an amendment to an operating certificate must file his application with the FAA Air Carrier District Office charged with the overall inspection of his operations at least 15 days before the proposed effective date of that amendment, unless a shorter filing period is allowed by that office.

(c) At any time within 30 days after refusal of the District Office to approve an application for amendment, the holder may petition the Administrator personally to reconsider the refusal.

§ 121.79 Amendment of operations specifications.

(a) The Administrator may amend any operations specifications issued under this Part, except those that are a part of the air carrier operating certificate—

(1) Upon application by the holder, if the Administrator determines that safety in air transportation (or in air commerce, in the case of a commercial operator) and the public interest allows the amendment; or

(2) If the Administrator determines that safety in air transportation (or in air commerce, in the case of a commercial operator) and the public interest requires the amendment.

(b) In the case of an amendment under paragraph (a)(2) of this section, the Administrator notifies the holder, in writing, of the proposed amendment, fixing a reasonable period (but not less than seven days) within which the holder may submit written information, views, and arguments on the amendment. After considering all relevant material presented, the Administrator notifies the holder of any amendment adopted, or rescinds the notice. The amendment becomes effective not less than 30 days after the holder receives notice of it, unless the holder petitions the Administrator personally to reconsider the amendment, in which case its effective date is stayed pending a decision by the Administrator. If the Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation, that makes the procedure in this paragraph impracticable or contrary to the public interest, he may issue an amendment, effective without stay, on the date the holder receives notice of it. In such a case, the Administrator incorporates the finding, and a brief statement of the reasons for it, in the notice of the amended operations specifications to be adopted.

(c) An applicant must file his application for an amendment of operations specifications with the FAA District Office charged with the overall inspection of its operations at least 15 days before the date that he proposes for the amendment to become effective, unless a shorter filing period is allowed by that office.

(d) Within 30 days after receiving from the District Office a notice of refusal to approve the application for amendment, the applicant may petition the Administrator personally to reconsider the refusal to amend.

(e) Airport and route authorizations may be amended under § 121.77.

§ 121.81 Inspection authority.

(a) Each certificate holder shall allow the Administrator, at any time or place, to make any inspections or tests to determine its compliance with the Federal Aviation Act of 1958, the Federal Aviation Regulations, its operating certificate and operations specifications, or its eligibility to continue to hold its certificate.

(b) In the case of a supplemental air carrier or commercial operator, these inspections and tests include inspections and tests of financial books and records, except that the Administrator does not exercise this authority with respect to the financial books and records of a supplemental air carrier if the information sought can be obtained from the Civil Aeronautics Board.

§ 121.83 Change of address.

Each certificate holder shall notify the FAA Air Carrier District Office charged with the overall inspection of its operations, in writing, at least 30 days in advance, of any change in the address of its principal business office, its principal operations base, or its principal maintenance base.

Subpart E—Approval of Routes: Domestic and Flag Air Carriers

§ 121.91 Applicability.

This subpart prescribes rules for obtaining approval of routes by domestic or flag air carriers.

§ 121.93 Route requirements: general.

(a) Each domestic or flag air carrier seeking a route approval must show—

(1) That it is able to conduct satisfactory scheduled operations between each regular, provisional, and refueling airport over that route or route segment; and

(2) That the facilities and services required by §§ 121.97 through 121.107 are available and adequate for the proposed operation.

The Administrator approves a route outside of controlled airspace if he determines that traffic density is such that an adequate level of safety can be assured.

(b) Paragraph (a) of this section does not require actual flight over a route or route segment if the air carrier shows that the flight is not essential to safety, considering the availability and adequacy of airports, lighting, maintenance, communication, navigation, fueling,

ground, and airplane radio facilities, and the ability of the personnel to be used in the proposed operation.

§ 121.95 Route width.

(a) Approved routes and route segments over U.S. Federal airways or foreign airways (and advisory routes in the case of flag air carriers) have a width equal to the designated width of those airways or routes. Whenever the Administrator finds it necessary to determine the width of other approved routes, he considers the following:

(1) Terrain clearance.
(2) Minimum en route altitudes.
(3) Ground and airborne navigation aids.
(4) Air traffic density.
(5) ATC procedures.

(b) Any route widths of other approved routes determined by the Administrator are specified in the air carrier's operations specifications.

§ 121.97 Airports.

Each domestic and flag air carrier must show that each route it submits for approval has enough airports that are properly equipped and adequate for the proposed operation, considering such items as size, surface, obstructions, facilities, public protection, lighting, navigational and communications aids, and ATC.

§ 121.99 Communications facilities.

Each domestic and flag air carrier must show that a two-way air/ground radio communication system is available at points that will ensure reliable and rapid communications, under normal operating conditions over the entire route (either direct or via approved point to point circuits) between each airplane and the appropriate dispatch office, and between each airplane and the appropriate air traffic control unit. For all domestic air carrier operations and for flag air carrier operations in the 48 contiguous States and the District of Columbia, the communications systems between each airplane and the dispatch office must be independent of any system operated by the United States.

§ 121.101 Weather reporting facilities.

(a) Each domestic and flag air carrier must show that enough weather reporting services are available along each route to ensure weather reports and forecasts necessary for the operation.

(b) No domestic or flag air carrier may use any weather report to control flight unless—

(1) For operations within the 48 contiguous States and the District of Columbia, it was prepared by the U.S. Weather Bureau or a source approved by the Weather Bureau; or

(2) For operations conducted outside the 48 contiguous States and the District of Columbia, it was prepared by a source approved by the Administrator.

(c) Each domestic or flag air carrier that uses forecasts to control flight movements shall use forecasts prepared from weather reports specified in paragraph (b) of this section.

§ 121.103 En route navigational facilities.

(a) Except as provided in paragraph (b) of this section, each domestic and flag air carrier must show, for each proposed route, that nonvisual ground aids are—

(1) Available over the route for navigating aircraft within the degree of accuracy required for ATC; and

(2) Located to allow navigation to any regular, provisional, refueling, or alternate airport, within the degree of accuracy necessary for the operation involved.

Except for those aids required for routes to alternate airports, nonvisual ground aids required for approval of routes outside of controlled airspace are listed in the air carrier's operations specifications.

(b) Nonvisual ground aids are not required for—

(1) Day VFR operations that the air carrier shows can be conducted safely by pilotage because of the characteristics of the terrain;

(2) Night VFR operations on routes that the air carrier shows have reliably lighted landmarks adequate for safe operation; and

(3) Operations on route segments where the use of celestial or other specialized means of navigation is approved by the Administrator.

§ 121.105 Servicing and maintenance facilities.

Each domestic and flag air carrier must show that competent personnel and adequate facilities and equipment (including spare parts, supplies, and materials) are available at such points along the air carrier's route as are necessary for the proper servicing, maintenance, and preventive maintenance of airplanes and auxiliary equipment.

§ 121.107 Dispatch centers.

Each domestic and flag air carrier must show that it has enough dispatch centers, adequate for the operations to be conducted, that are located at points necessary to ensure proper operational control of each flight.

Subpart F—Approval of Areas and Routes for Supplemental Air Carriers and Commercial Operators

§ 121.111 Applicability.

This subpart prescribes rules for obtaining approval of areas and routes by supplemental air carriers and commercial operators.

§ 121.113 Area and route requirements: general.

(a) Each supplemental air carrier or commercial operator seeking route and area approval must show—

(1) That it is able to conduct operations within the United States in accordance with subparagraphs (3) and (4) of this paragraph;

(2) That it is able to conduct operations in accordance with the applicable requirements for each area outside the United States for which authorization is requested;

(3) That it is equipped and able to conduct operations over, and use the navigational facilities associated with, the Federal airways, foreign airways, or advisory routes (ADR's) to be used; and

(4) That it will conduct all IFR and night VFR operations over Federal airways, foreign airways, controlled airspace, or advisory routes (ADR's).

(b) Notwithstanding paragraph (a) (4) of this section, the Administrator may approve a route outside of controlled airspace if the supplemental air carrier or commercial operator shows the route is safe for operations and the Administrator finds that traffic density is such that an adequate level of safety can be assured. The air carrier or commercial operator may not use such a route unless it is approved by the Administrator and is listed in the air carrier's or commercial operator's operations specifications.

§ 121.115 Route width.

(a) Routes and route segments over Federal airways, foreign airways, or advisory routes have a width equal to the designated width of those airways or advisory routes. Whenever the Administrator finds it necessary to determine the width of other routes, he considers the following:

(1) Terrain clearance.
(2) Minimum en route altitudes.
(3) Ground and airborne navigation aids.
(4) Air traffic density.
(5) ATC procedures.

(b) Any route widths of other routes determined by the Administrator are specified in the air carrier's or commercial operator's operations specifications.

§ 121.117 Airports.

No supplemental air carrier or commercial operator may use any airport unless it is properly equipped and adequate for the proposed operation, considering such items as size, surface, obstructions, facilities, public protection, lighting, navigational and communications aids, and ATC.

§ 121.119 Weather reporting facilities.

(a) No supplemental air carrier or commercial operator may use any weather report to control flight unless it was prepared and released by the U.S. Weather Bureau or a source approved by the Weather Bureau. For operations outside the U.S., or at U.S. Military airports, where those reports are not available, the air carrier or commercial operator must show that its weather reports are prepared by a source found satisfactory by the Administrator.

(b) Each supplemental air carrier or commercial operator that uses forecasts to control flight movements shall use forecasts prepared from weather reports specified in paragraph (a) of this section.

§ 121.121 En route navigational facilities.

(a) Except as provided in paragraph (b) of this section, no supplemental air carrier or commercial operator may conduct any operation over a route unless nonvisual ground aids are—

(1) Available over the route for navigating airplanes within the degree of accuracy required for ATC; and

(2) Located to allow navigation to any airport of destination, or alternate airport, within the degree of accuracy necessary for the operation involved.

(b) Nonvisual ground aids are not required for—

(1) Day VFR operations that can be conducted safely by pilotage because of the characteristics of the terrain;

(2) Night VFR operations on lighted airways or on routes that the Administrator determines have reliable landmarks adequate for safe operation; or

(3) Operations on route segments where the use of celestial or other specialized means of navigation is approved.

(c) Except for those aids required for routes to alternate airports, the nonvisual ground navigational aids that are required for approval of routes outside of controlled airspace are specified in the air carrier's or commercial operator's operations specifications.

§ 121.123 Servicing and maintenance facilities.

Each supplemental air carrier or commercial operator must show that competent personnel and adequate facilities and equipment (including spare parts, supplies, and materials) are available for the proper servicing, maintenance, and preventive maintenance of aircraft and auxiliary equipment.

§ 121.125 Flight following system.

(a) Each supplemental air carrier or commercial operator must show that it has—

(1) An approved flight following system established in accordance with Subpart U of this part and adequate for the proper monitoring of each flight, considering the operations to be conducted; and

(2) Flight following centers located at those points necessary—

(i) To ensure the proper monitoring of the progress of each flight with respect to its departure at the point of origin and arrival at its destination, including intermediate stops and diversions therefrom, and maintenance or mechanical delays encountered at those points or stops; and

(ii) To ensure that the pilot in command is provided with all information necessary for the safety of the flight.

(b) A supplemental air carrier or commercial operator may arrange to have flight following facilities provided by persons other than its employees, but in such a case the air carrier or commercial operator continues to be primarily responsible for operational control of each flight.

(c) A flight following system need not provide for in-flight monitoring by a flight following center.

(d) The supplemental air carrier's or commercial operator's operations specifications specify the flight following system it is authorized to use and the location of the centers.

§ 121.127 Flight following system: requirements.

(a) Each supplemental air carrier or commercial operator using a flight following system must show that—

(1) The system has adequate facilities and personnel to provide the information necessary for the initiation and safe conduct of each flight to—

(i) The flight crew of each aircraft; and

(ii) The persons designated by the air carrier or commercial operator to perform the function of operational control of the aircraft; and

(2) The system has a means of communication by private or available public facilities (such as telephone, telegraph, or radio) to monitor the progress of each flight with respect to its departure at the point of origin and arrival at its destination, including intermediate stops and diversions therefrom, and maintenance or mechanical delays encountered at those points or stops.

(b) The supplemental air carrier or commercial operator must show that the personnel specified in paragraph (a) of this section, and those it designates to perform the function of operational control of the aircraft, are able to perform their required duties.

Subpart G—Manual Requirements

§ 121.131 Applicability.

This subpart prescribes requirements for preparing and maintaining manuals by all certificate holders.

§ 121.133 Preparation.

(a) Each domestic and flag air carrier shall prepare and keep current a manual for the use and guidance of flight and ground operations personnel in conducting its operations.

(b) Each supplemental air carrier and commercial operator shall prepare and keep current a manual for the use and guidance of flight, ground operations, and management personnel in conducting its operations.

§ 121.135 Contents.

(a) Each manual required by § 121.133 must—

(1) Include instructions and information necessary to allow the personnel concerned to perform their duties and responsibilities with a high degree of safety;

(2) Be in a form that is easy to revise;

(3) Have the date of last revision on each page concerned; and

(4) Not be contrary to any applicable Federal regulation and, in the case of a flag or supplemental air carrier, any applicable foreign regulation, or the certificate holder's operations specifications or operating certificate.

(b) The manual may be in two or more separate parts, containing together all of the following information, but each part must contain that part of the information that is appropriate for each group of personnel:

(1) General policies.

(2) Duties and responsibilities of each crewmember and appropriate members of the ground organization and in the case of supplemental air carriers and commercial operators, management personnel.

(3) Reference to appropriate Federal Aviation Regulations.

(4) Flight dispatching and operational control, including procedures for coordinated dispatch or flight control or flight following procedures, as applicable.

(5) En route flight, navigation, and communication procedures, including procedures for the dispatch or release or continuance of flight if any item of equipment required for the particular type of operation becomes inoperative or unserviceable en route.

(6) For domestic or flag air carriers, appropriate information from the en route operations specifications, including for each approved route the types of aircraft authorized, their crew complement, the type of operation such as VFR, IFR, day, night, etc., and any other pertinent information.

(7) For supplemental air carriers or commercial operators, appropriate information from the operations specifications, including the area of operations authorized, the types of aircraft authorized, their crew complement, the type of operation such as VFR, IFR, day, night, etc., and any other pertinent information.

(8) Appropriate information from the airport operations specifications, including for each airport—

(i) Its location (domestic and flag air carrier operations only);

(ii) Its designation (regular, alternate, provisional, etc.) (domestic and flag air carrier operations only);

(iii) The types of aircraft authorized (domestic and flag air carrier operations only);

(iv) Instrument approach procedures;

(v) Landing and takeoff minimums; and

(vi) Any other pertinent information.

(9) Takeoff, en route, and landing weight limitations.

(10) Procedures for familiarizing passengers with the use of emergency equipment, during flight.

(11) Emergency equipment and procedures.

(12) The method of designating succession of command of flight crewmembers.

(13) Procedures for determining the usability of landing and takeoff areas, and for disseminating pertinent information thereon to operations personnel.

(14) Procedures for operating in periods of ice, hail, thunderstorms, turbulence, or any potentially hazardous meteorological condition.

(15) Airman training programs, including appropriate ground, flight, and emergency phases.

(16) Instructions and procedures for maintenance, preventive maintenance, and servicing.

(17) Time limitations, or standards for determining time limitations, for

overhauls, inspections, and checks of airframes, engines, propellers, and appliances.

(18) Procedures for refueling aircraft, eliminating fuel contamination, protection from fire (including electrostatic protection), and supervising and protecting passengers during refueling.

(19) Airworthiness inspections, including instructions covering procedures, standards, responsibilities, and authority of inspection personnel.

(20) Methods and procedures for maintaining the aircraft weight and center of gravity within approved limits.

(21) Where applicable, pilot and dispatcher route and airport qualification procedures.

(22) Accident notification procedures.

(23) Other information or instructions relating to safety.

(c) Each certificate holder shall maintain at least one complete copy of the manual at its principal operations base.

§ 121.137 Distribution.

(a) Each certificate holder shall furnish copies of the manual required by § 121.133 (and the changes and additions thereto) or appropriate parts of the manual to—

(1) Its appropriate ground operations and maintenance personnel;

(2) Crewmembers; and

(3) Representatives of the Administrator assigned to it.

(b) Each person to whom a manual or appropriate parts of it are furnished under paragraph (a) of this section shall keep it up to date with the changes and additions furnished to him.

§ 121.139 Requirement for manual aboard aircraft: supplemental air carriers and commercial operators.

(a) Except as provided in paragraph (b) of this section, each supplemental air carrier and commercial operator shall carry appropriate parts of the manual on each aircraft when away from the principal base. The appropriate parts must be available for use of ground or flight personnel.

(b) If a supplemental air carrier or commercial operator is able to perform all scheduled maintenance at specified stations where it keeps maintenance parts of the manual, it does not have to carry those parts of the manual aboard the aircraft en route to those stations.

§ 121.141 Aircraft Flight Manual.

(a) Each certificate holder shall keep a current approved Aircraft Flight Manual for each type of transport category aircraft that it operates.

(b) Each certificate holder shall carry an approved Aircraft Flight Manual, or manual required by § 121.133 containing the information required for the Aircraft Flight Manual, in each transport category aircraft. If sections of the required information from the Aircraft Flight Manual are incorporated in the manual required by § 121.133, the holder shall clearly identify the sections as Aircraft Flight Manual requirements.

Subpart H—Aircraft Requirements

§ 121.151 Applicability.

This subpart prescribes aircraft requirements for all certificate holders.

§ 121.153 Aircraft requirements: general.

(a) No certificate holder may operate an aircraft unless that aircraft—

(1) Is registered as a civil aircraft of the United States and carries an appropriate current airworthiness certificate issued under this chapter; and

(2) Is in an airworthy condition and meets the applicable airworthiness requirements of this chapter, including those relating to identification and equipment.

(b) A certificate holder may use an approved weight and balance control system based on average, assumed, or estimated weight to comply with applicable airworthiness requirements and operating limitations.

§ 121.155 Exclusive use requirements: supplemental air carriers and commercial operators.

(a) No supplemental air carrier or commercial operator may use any aircraft unless—

(1) It has exclusive use of the aircraft;

(2) The aircraft is listed in its operations specifications; and

(3) The aircraft is not listed in the operations specifications of any other air carrier or commercial operator.

(b) Within 10 days after a supplemental air carrier or commercial operator ceases to have exclusive use of an aircraft listed in its operations specifications it shall notify the FAA Air Carrier Inspector assigned to its operations, and request an appropriate amendment deleting the aircraft from its operations specifications.

(c) A supplemental air carrier or commercial operator that does not have the exclusive use of at least one aircraft does not meet the requirements of this part, and the Administrator may, in an appropriate case, suspend or revoke the supplemental air carrier's or commercial operator's certificate.

(d) For the purposes of this section, a supplemental air carrier or commercial operator has exclusive use of an aircraft if it has the sole possession, control, and use of it for flight, as owner, or has a written agreement (including arrangements for the performance of required maintenance) giving it that possession, control, and use for at least six months.

§ 121.157 Aircraft certification and equipment requirements.

(a) *Airplanes certificated before July 1, 1942.* No certificate holder may operate an airplane that was type certificated before July 1, 1942, unless—

(1) That airplane meets the requirements of § 121.173(c); or

(2) That airplane and all other airplanes of the same or related type operated by that certificate holder meet the performance requirements of §§ 4a.737–T through 4a.750–T of the Civil Air Regulations as in effect on January 31, 1965; or §§ 25.45 through 25.75 and § 121.173 (a), (b), (d), and (e).

(b) *Airplanes certificated after June 30, 1942.* Except as provided in paragraphs (c) and (d) of this section, no certificate holder may operate an airplane that was type certificated after June 30, 1942, unless it is certificated as a transport category airplane and meets the requirements of § 121.173 (a), (b), (d), and (e).

(c) *C–46 type airplanes: passenger-carrying operations.* No certificate holder may operate a C–46 airplane in passenger-carrying operations unless that airplane is operated in accordance with the operating limitations for transport category airplanes and meets the requirements of paragraph (b) of this section or meets the requirements of Part 4b, as in effect July 20, 1950, and the requirements of § 121.173 (a), (b), (d), and (e), except that—

(1) The requirements of §§ 4b.0 through 4b.19 as in effect May 18, 1954, must be complied with;

(2) The birdproof windshield requirements of § 4b.352 need not be complied with;

(3) The provisions of §§ 4b.480 through 4b.490 (except §§ 4b.484(a)(1) and 4b.487(e)), as in effect May 16, 1953, must be complied with; and

(4) The provisions of subparagraph 4b.484(a)(1), as in effect July 20, 1950, must be complied with.

In determining the takeoff path in accordance with § 4b.116 and the one-engine inoperative climb in accordance with § 4b.120 (a) and (b), the propeller of the inoperative engine may be assumed to be feathered if the airplane is equipped with either an approved means for automatically indicating when the particular engine has failed or an approved means for automatically feathering the propeller of the inoperative engine. The Administrator may authorize deviations from compliance with the requirements of §§ 4b.130 through 4b.190 and Subparts C, D, E, and F of Part 4b (as designated in this paragraph) if he finds that (considering the effect of design changes) compliance is extremely difficult to accomplish and that service experience with the C–46 airplane justifies the deviation.

(d) *C–46 type airplanes: cargo operations.* No certificate holder may use a nontransport category C–46 type airplane in cargo operations unless—

(1) It is certificated at a maximum gross weight that is not greater than 48,000 pounds;

(2) It meets the requirements of §§ 121.199 through 121.205 using the performance data in Appendix C to this part;

(3) Before each flight, each engine contains at least 25 gallons of oil; and

(4) After December 31, 1964—

(i) It is powered by a type and model engine as set forth in Appendix C of this part, when certificated at a maxi-

mum gross takeoff weight greater than 45,000 pounds; and

(ii) It complies with the special airworthiness requirement set forth in §§ 121.213 through 121.287 of this part or in Appendix C of this part.

(e) *Helicopters.* No supplemental air carrier or commercial operator may operate a helicopter unless it is operated, certificated, and equipped in accordance with §§ 127.71 through 127.125.

§ 121.159 Single-engine airplanes prohibited.

Except as provided in § 121.9, no certificate holder may operate a single-engine airplane.

§ 121.161 Airplane limitations: type of route.

(a) Unless otherwise authorized by the Administrator, based on the character of the terrain, the kind of operation, or the performance of the airplane to be used, no domestic or flag air carrier may operate in any operations, and no supplemental air carrier or commercial operator may operate in passenger-carrying operations, a two-engine or three-engine airplane (except a three-engine turbine-powered airplane) over a route that contains a point farther than one hour's flying time (in still air at normal cruising speed with one engine inoperative) from an adequate airport.

(b) No certificate holder may operate a land airplane (other than a DC–3, C–46, CV–340, or CV–440) in an extended overwater operation unless it is certificated or approved as adequate for ditching under the ditching provisions of Part 25 of this chapter.

§ 121.163 Aircraft proving tests.

(a) No domestic or flag air carrier may operate an aircraft not before proven for use in scheduled air carrier operations and no supplemental air carrier or commercial operator may operate an aircraft not before proven for use in air carrier or commercial operator operations unless an aircraft of that type has had, in addition to the aircraft certification tests, at least 100 hours of proving tests under the Administrator's supervision, at least 50 hours of which must have been flown over authorized routes (flag and domestic air carriers) or in en route operations (supplemental air carriers and commercial operators) and at least 10 hours of which must have been flown at night.

(b) A certificate holder may not operate an aircraft of a type that has been proven for use in its class of operations if it has not previously proved that type, or if that aircraft has been materially altered in design, unless—

(1) The aircraft has been tested for at least 50 hours, of which at least 25 hours were over authorized routes; or

(2) The Administrator specifically authorizes deviations because special circumstances of the particular case make a literal observance of the requirements of this paragraph unnecessary.

(c) A supplemental air carrier or commercial operator may operate a helicopter that has not before been proven for use in supplemental air carrier or commercial operator operations if the helicopter has been used extensively in the services of the armed forces and meets the requirements of paragraph (b) of this section.

(d) For the purposes of paragraph (b) of this section, a type of aircraft is considered to be materially altered in design if the alterations include—

(1) The installation of powerplants other than those of a type similar to those with which it is certificated; or

(2) Alterations to the aircraft or its components that materially affect flight characteristics.

(e) No certificate holder may carry passengers in an aircraft during proving tests, except for those needed to make the test and those designated by the Administrator. However, it may carry mail, express, or other cargo, when approved.

Subpart I—Airplane Performance Operating Limitations

§ 121.171 Applicability.

(a) This subpart prescribes airplane performance operating limitations for all certificate holders.

(b) For the purposes of this part, "effective length of the runway", for takeoff means the distance from the end of the runway at which the takeoff is started to the point at which the obstruction clearance plane associated with the other end of the runway intersects the runway centerline. For landing, it means the distance from the point at which the obstruction clearance plane associated with the approach end of the runway intersects the centerline of the runway to the far end thereof.

(c) For the purposes of this subpart, "obstruction clearance plane" means a plane sloping upward from the runway at a slope of 1:20 to the horizontal, and tangent to or clearing all obstructions within a specified area surrounding the runway as shown in a profile view of that area. In the plan view, the centerline of the specified area coincides with the centerline of the runway, beginning at the point where the obstruction clearance plane intersects the centerline of the runway and proceeding to a point at least 1,500 feet from the beginning point. Thereafter the centerline coincides with the takeoff path over the ground for the runway (in the case of takeoffs) or with the instrument approach counterpart (for landings), or, where the applicable one of these paths has not been established, it proceeds consistent with turns of at least 4,000 foot radius until a point is reached beyond which the obstruction clearance plane clears all obstructions. This area extends laterally 200 feet on each side of the centerline at the point where the obstruction clearance plane intersects the runway and continues at this width to the end of the runway; then it increases uniformly to 500 feet on each side of the centerline at a point 1,500 feet from the intersection of the obstruction clearance plane with the runway; thereafter it extends laterally 500 feet on each side of the centerline.

§ 121.173 General.

(a) Each certificate holder operating a reciprocating engine powered transport category airplane shall comply with §§ 121.175 through 121.187.

(b) Each certificate holder operating a turbine engine powered transport category airplane shall comply with applicable provisions of §§ 121.189 through 121.197, except that when it operates a turbo-propeller powered transport category airplane certificated after August 29, 1959, but previously type certificated with the same number of reciprocating engines, it may comply with §§ 121.175 through 121.187.

(c) Each certificate holder operating a large nontransport category airplane shall comply with §§ 121.199 through 121.205 and any determination of compliance must be based only on approved performance data.

(d) The performance data in the Airplane Flight Manual applies in determining compliance with §§ 121.175 through 121.197. Where conditions are different from those on which the performance data is based, compliance is determined by interpolation or by computing the effects of changes in the specific variables, if the results of the interpolation or computations are substantially as accurate as the results of direct tests.

§ 121.177 Transport category airplanes: reciprocating engine powered: takeoff limitations.

(a) No person operating a reciprocating engine powered transport category airplane may takeoff that airplane unless it is possible—

(1) To stop the airplane safely on the runway, as shown by the accelerate stop distance data, at any time during takeoff until reaching critical-engine failure speed;

(2) If the critical engine fails at any time after the airplane reaches critical-engine failure speed V_1, to continue the takeoff and reach a height of 50 feet, as indicated by the takeoff path data, before passing over the end of the runway; and

(3) To clear all obstacles either by at least 50 feet vertically (as shown by the takeoff path data) or 200 feet horizontally within the airport boundaries and 300 feet horizontally beyond the boundaries, without banking before reaching a height of 50 feet (as shown by the takeoff path data) and thereafter without banking more than 15 degrees.

(b) In applying this section, corrections must be made for any runway gradient. To allow for wind effect, takeoff data based on still air may be corrected by taking into account not more than 50 percent of any reported headwind component and not less than 150 percent of any reported tailwind component.

§ 121.179 Transport category airplanes: reciprocating engine powered: en route limitations: all engines operating.

(a) No person operating a reciprocating engine powered transport category airplane may take off that airplane at a weight, allowing for normal consumption

of fuel and oil, that does not allow a rate of climb (in feet per minute), with all engines operating, of at least 6.90 V_{S_0} (that is, the number of feet per minute is obtained by multiplying the number of knots by 6.90) at an altitude of at least 1,000 feet above the highest ground or obstruction within ten miles of each side of the intended track.

(b) This section does not apply to transport category airplanes certificated under Part 4a of the Civil Air Regulations.

§ 121.181 Transport category airplanes: reciprocating engine powered: en route limitations: one engine inoperative.

(a) Except as provided in paragraph (b) of this section, no person operating a reciprocating engine powered transport category airplane may take off that airplane at a weight, allowing for normal consumption of fuel and oil, that does not allow a rate of climb (in feet per minute), with one engine inoperative, of at least $0.079-\frac{0.106}{N}V_{S_0}^2$ (where N is the number of engines installed and V_{S_0} is expressed in knots) at an altitude of at least 1,000 feet above the highest ground or obstruction within 10 miles of each side of the intended track. However, for the purposes of this paragraph the rate of climb for transport category airplanes certificated under Part 4a of the Civil Air Regulations is $0.026\ V_{S_0}^2$.

(b) In place of the requirements of paragraph (a) of this section, a person may, under an approved procedure, operate a reciprocating engine powered transport category airplane, at an all-engines-operating altitude that allows the airplane to continue, after an engine failure, to an alternate airport where a landing can be made in accordance with § 121.187, allowing for normal consumption of fuel and oil. After the assumed failure, the flight path must clear the ground and any obstruction within five miles on each side of the intended track by at least 2,000 feet.

(c) If an approved procedure under paragraph (b) of this section is used, the certificate holder shall comply with the following:

(1) The rate of climb (as prescribed in the Airplane Flight Manual for the appropriate weight and altitude) used in calculating the airplane's flight path shall be diminished by an amount, in feet per minute, equal to $0.079-\frac{0.106}{N}V_{S_0}^2$ (when N is the number of engines installed and V_{S_0} is expressed in knots) for airplanes certificated under Part 25 of this chapter and by $0.026\ V_{S_0}^2$ for airplanes certificated under Part 4a of the Civil Air Regulations.

(2) The all-engines-operating altitude shall be sufficient so that in the event the critical engine becomes inoperative at any point along the route, the flight will be able to proceed to a predetermined alternate airport by use of this procedure. In determining the takeoff weight, the airplane is assumed to pass over the critical obstruction following engine failure at a point no closer to the critical obstruction than the nearest approved radio navigational fix, unless the Administrator approves a procedure established on a different basis upon finding that adequate operational safeguards exist.

(3) The airplane must meet the provisions of paragraph (a) of this section at 1,000 feet above the airport used as an alternate in this procedure.

(4) The procedure must include an approved method of accounting for winds and temperatures that would otherwise adversely affect the flight path.

(5) In complying with this procedure fuel jettisoning is allowed if the certificate holder shows that it has an adequate training program, that proper instructions are given to the flight crew, and all other precautions are taken to insure a safe procedure.

(6) The certificate holder shall specify in the dispatch or flight release an alternate airport that meets the requirements of § 121.625.

§ 121.183 Part 25 transport category airplanes with four or more engines: reciprocating engine powered: en route limitations: two engines inoperative.

(a) No person may operate an airplane certificated under Part 25 and having four or more engines unless—

(1) There is no place along the intended track that is more than 90 minutes (with all engines operating at cruising power) from an airport that meets the requirements of § 121.187; or

(2) It is operated at a weight allowing the airplane, with the two critical engines inoperative, to climb at 0.013 $V_{S_0}^2$ feet per minute (that is, the number of feet per minute is obtained by multiplying the number of knots squared by 0.013) at an altitude of 1,000 feet above the highest ground or obstruction within 10 miles on each side of the intended track, or at an altitude of 5,000 feet, whichever is higher.

(b) For the purposes of paragraph (a)(2) of this section, it is assumed that—

(1) The two engines fail at the point that is most critical with respect to the takeoff weight;

(2) Consumption of fuel and oil is normal with all engines operating up to the point where the two engines fail and with two engines operating beyond that point;

(3) Where the engines are assumed to fail at an altitude above the prescribed minimum altitude, compliance with the prescribed rate of climb at the prescribed minimum altitude need not be shown during the descent from the cruising altitude to the prescribed minimum altitude, if those requirements can be met once the prescribed minimum altitude is reached, and assuming descent to be along a net flight path and the rate of descent to be $0.013\ V_{S_0}^2$ greater than the rate in the approved performance data; and

(4) If fuel jettisoning is provided, the airplane's weight at the point where the two engines fail is considered to be not less than that which would include enough fuel to proceed to an airport meeting the requirements of § 121.187 and to arrive at an altitude of at least 1,000 feet directly over that airport.

§ 121.185 Transport category airplanes: reciprocating engine powered: landing limitations: destination airport.

(a) Except as provided in paragraph (b) of this section no person operating a reciprocating engine powered transport category airplane may take off that airplane, unless its weight on arrival, allowing for normal consumption of fuel and oil in flight, would allow a full stop landing at the intended destination within 60 percent of the effective length of each runway described below from a point 50 feet directly above the intersection of the obstruction clearance plane and the runway. For the purposes of determining the allowable landing weight at the destination airport the following is assumed:

(1) The airplane is landed on the most favorable runway and in the most favorable direction in still air.

(2) The airplane is landed on the most suitable runway considering the probable wind velocity and direction (forecast for the expected time of arrival), the ground handling characteristics of the type of airplane, and other conditions such as landing aids and terrain, and allowing for the effect of the landing path and roll of not more than 50 percent of the headwind component or not less than 150 percent of the tailwind component.

(b) An airplane that would be prohibited from being taken off because it could not meet the requirements of paragraph (a)(2) of this section may be taken off if an alternate airport is specified that meets all of the requirements of this section except that the airplane can accomplish a full stop landing within 70 percent of the effective length of the runway.

§ 121.187 Transport category airplanes: reciprocating engine powered: landing limitations: alternate airport.

No person may list an airport as an alternate airport in a dispatch or flight release unless the airplane (at the weight anticipated at the time of arrival at the airport), based on the assumptions in § 121.185, can be brought to a full stop landing, within 70 percent of the effective length of the runway.

§ 121.189 Transport category airplanes: turbine engine powered; takeoff limitations.

(a) No person operating a turbine engine powered transport category airplane may take off that airplane at a weight greater than that listed in the Airplane Flight Manual for the elevation of the airport and for the ambient temperature existing at takeoff.

(b) No person operating a turbine engine powered transport category airplane certificated after August 26, 1957, but before August 30, 1959 (SR422, 422A), may take off that airplane at a weight greater than that listed in the Airplane Flight Manual for the minimum distances required for takeoff. In the case of an airplane certificated after Sep-

tember 30, 1958 (SR422A, 422B), the takeoff distance may include a clearway distance but the clearway distance included may not be greater than ½ of the takeoff run.

(c) No person operating a turbine engine powered transport category airplane certificated after August 29, 1959 (SR422B), may take off that airplane at a weight greater than that listed in the Airplane Flight Manual at which compliance with the following may be shown:

(1) The accelerate-stop distance must not exceed the length of the runway plus the length of any stopway.

(2) The takeoff distance must not exceed the length of the runway plus the length of any clearway except that the length of any clearway included must not be greater than one-half the length of the runway.

(3) The takeoff run must not be greater than the length of the runway.

(d) No person operating a turbine engine powered transport category airplane may take off that airplane at a weight greater than that listed in the Airplane Flight Manual—

(1) In the case of an airplane certificated after August 26, 1957, but before October 1, 1958 (SR422), that allows a takeoff path that clears all obstacles either by at least (35+0.01D) feet vertically (D is the distance along the intended flight path from the end of the runway in feet), or by at least 200 feet horizontally within the airport boundaries and by at least 300 feet horizontally after passing the boundaries; or

(2) In the case of an airplane certificated after September 30, 1958 (SR 422A, 422B), that allows a net takeoff flight path that clears all obstacles either by a height of at least 35 feet vertically, or by at least 200 feet horizontally within the airport boundaries and by at least 300 feet horizontally after passing the boundaries.

(e) In Determining maximum weights, minimum distances and flight paths under paragraphs (a) through (d) of this section, correction must be made for the runway to be used, the elevation of the airport, the effective runway gradient, and the ambient temperature and wind component at the time of takeoff.

(f) For the purposes of this section, it is assumed that the airplane is not banked before reaching a height of 50 feet, as shown by the takeoff path or net takeoff flight path data (as appropriate) in the Airplane Flight Manual, and thereafter that the maximum bank is not more than 15 degrees.

(g) For the purposes of this section the terms, "takeoff distance," "takeoff run," "net takeoff flight path" and "takeoff path" have the same meanings as set forth in the rules under which the airplane was certificated.

§ 121.191 Transport category airplanes: turbine engine powered: en route limitations: one engine inoperative.

(a) No person operating a turbine engine powered transport category airplane may take off that airplane at a weight that is greater than that which (under the approved, one engine inoperative, en route net flight path data in the Airplane Flight Manual for that airplane) will allow compliance with subparagraph (1) or (2) of this paragraph, based on the ambient temperatures expected en route:

(1) There is a positive slope at an altitude of at least 1,000 feet above all terrain and obstructions within five statute miles on each side of the intended track, and, in addition, if that airplane was certificated after August 29, 1959 (SR 422B) there is a positive slope at 1,500 feet above the airport where the airplane is assumed to land after an engine fails.

(2) The net flight path allows the airplane to continue flight from the cruising altitude to an airport where a landing can be made under § 121.197, clearing all terrain and obstructions within five statute miles of the intended track by at least 2,000 feet vertically and with a positive slope at 1,000 feet above the airport where the airplane lands after an engine fails, or, if that airplane was certificated after September 30, 1958 (SR 422A, 422B), with a positive slope at 1,500 feet above the airport where the airplane lands after an engine fails.

(b) For the purposes of paragraph (a)(2) of this section, it is assumed that—

(1) The engine fails at the most critical point en route;

(2) The airplane passes over the critical obstruction, after engine failure at a point that is no closer to the obstruction than the nearest approved radio navigation fix, unless the Administrator authorizes a different procedure based on adequate operational safeguards;

(3) An approved method is used to allow for adverse winds;

(4) Fuel jettisoning will be allowed if the certificate holder shows that the crew is properly instructed, that the training program is adequate, and that all other precautions are taken to insure a safe procedure;

(5) The alternate airport is specified in the dispatch or flight release and meets the prescribed weather minimums; and

(6) The consumption of fuel and oil after engine failure is the same as the consumption that is allowed for in the approved net flight path data in the Airplane Flight Manual.

§ 121.193 Transport category airplanes: turbine engine powered: en route limitations: two engines inoperative.

(a) *Airplanes certificated after August 26, 1957, but before October 1, 1958* (SR 422). No person may operate a turbine engine powered transport category airplane along an intended route unless he complies with either of the following:

(1) There is no place along the intended track that is more than 90 minutes (with all engines operating at cruising power) from an airport that meets the requirements of § 121.197.

(2) Its weight, according to the two-engine-inoperative, en route, net flight path data in the Airplane Flight Manual, allows the airplane to fly from the point where the two engines are assumed to fail simultaneously to an airport that meets the requirements of § 121.197, with a net flight path (considering the ambient temperature anticipated along the track) having a positive slope at an altitude of at least 1,000 feet above all terrain and obstructions within five miles on each side of the intended track, or at an altitude of 5,000 feet, whichever is higher.

For the purposes of subparagraph (2) of this paragraph, it is assumed that the two engines fail at the most critical point en route, that if fuel jettisoning is provided, the airplane's weight at the point where the engines fail includes enough fuel to continue to the airport and to arrive at an altitude of at least 1,000 feet directly over the airport, and that the fuel and oil consumption after engine failure is the same as the consumption allowed for in the net flight path data in the Airplane Flight Manual.

(b) *Aircraft certificated after September 30, 1958, but before August 30, 1959* (SR 422A). No person may operate a turbine engine powered transport category airplane along an intended route unless he complies with either of the following:

(1) There is no place along the intended track that is more than 90 minutes (with all engines operating at cruising power) from an airport that meets the requirements of § 121.197.

(2) Its weight, according to the two-engine-inoperative, en route, net flight path data in the Airplane Flight Manual, allows the airplane to fly from the point where the two engines are assumed to fail simultaneously to an airport that meets the requirements of § 121.197, with a net flight path (considering the ambient temperatures anticipated along the track) having a positive slope at an altitude of at least 1,000 feet above all terrain and obstructions within 5 miles on each side of the intended track, or at an altitude of 2,000 feet, whichever is higher.

For the purposes of subparagraph (2) of this paragraph, it is assumed that the two engines fail at the most critical point en route, that the airplane's weight at the point where the engines fail includes enough fuel to continue to the airport, to arrive at an altitude of at least 1,500 feet directly over the airport, and thereafter to fly for 15 minutes at cruise power or thrust, or both, and that the consumption of fuel and oil after engine failure is the same as the consumption allowed for in the net flight path data in the Airplane Flight Manual.

(c) *Aircraft certificated after August 29, 1959* (SR 422B). No person may operate a turbine engine powered transport category airplane along an intended route unless he complies with either of the following:

(1) There is no place along the intended track that is more than 90 minutes (with all engines operating at cruising power) from an airport that meets the requirements of § 121.197.

(2) Its weight, according to the two-engine inoperative, en route, net flight path data in the Airplane Flight Manual, allows the airplane to fly from the point where the two engines are assumed to fail simultaneously to an airport that meets the requirements of § 121.197, with the net flight path (considering the ambient temperatures anticipated along

the track) clearing vertically by at least 2,000 feet all terrain and obstructions within five statute miles (4.34 nautical miles) on each side of the intended track. For the purposes of this subparagraph, it is assumed that—

(i) The two engines fail at the most critical point en route;

(iii) The net flight path has a positive slope at 1,500 feet above the airport where the landing is assumed to be made after the engines fail;

(iii) Fuel jettisoning will be approved if the certificate holder shows that the crew is properly instructed, that the training program is adequate, and that all other precautions are taken to ensure a safe procedure;

(iv) The airplane's weight at the point where the two engines are assumed to fail provides enough fuel to continue to the airport, to arrive at an altitude of at least 1,500 feet directly over the airport, and thereafter to fly for 15 minutes at cruise power or thrust, or both; and

(v) The consumption of fuel and oil after the engine failure is the same as the consumption that is allowed for in the net flight path data in the Airplane Flight Manual.

§ 121.195 Transport category airplanes: turbine engine powered: landing limitations: destination airports.

(a) No person operating a turbine engine powered transport category airplane may take off that airplane at such a weight that (allowing for normal consumption of fuel and oil in flight to the destination or alternate airport) the weight of the airplane on arrival would exceed the landing weight set forth in the Airplane Flight Manual for the elevation of the destination or alternate airport and the ambient temperature anticipated at the time of landing.

(b) Except as provided in paragraph (c) of this section, no person operating a turbine engine powered transport category airplane may take off that airplane unless its weight on arrival, allowing for normal consumption of fuel and oil in flight (in accordance with the landing distance set forth in the Airplane Flight Manual for the elevation of the destination airport and the wind conditions anticipated there at the time of landing), would allow a full stop landing at the intended destination airport within 60 percent of the effective length of each runway described below from a point 50 feet above the intersection of the obstruction clearance plane and the runway. For the purpose of determining the allowable landing weight at the destination airport the following is assumed:

(1) The airplane is landed on the most favorable runway and in the most favorable direction, in still air.

(2) The airplane is landed on the most suitable runway considering the probable wind velocity and direction and the ground handling characteristics of the airplane, and considering other conditions such as landing aids and terrain.

(c) An airplane that would be prohibited from being taken off because it could not meet the requirements of paragraph (b)(2) of this section, may be taken off if an alternate airport is specified that meets all the requirements of this section except that the airplane can accomplish a full stop landing within 70 percent of the effective length of the runway.

§ 121.197 Transport category airplanes: turbine engine powered: landing limitations: alternate airports.

No person may list an airport as an alternate airport in a dispatch or flight release for a turbine engine powered transport category airplane unless (based on the assumptions in § 121.195 (b)) that airplane at the weight anticipated at the time of arrival can be brought to a full stop landing within 70 percent of the effective length of the runway from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

§ 121.198 Transport category cargo service airplanes: increased zero fuel and landing weights.

(a) Notwithstanding the applicable structural provisions of the transport category airworthiness regulations but subject to paragraphs (b) through (g) of this section, a certificate holder may operate (for cargo service only) any of the following transport category airplanes (certificated under Part 4b of the Civil Air Regulations effective before March 13, 1956) at increased zero fuel and landing weights—

(1) DC-6A, DC-6B, DC-7B, and DC-7C; and

(2) L1049B, C, D, E, F, G, and H, and the L1649A when modified in accordance with supplemental type certificate SA 4-1402.

(b) The zero fuel weight (maximum weight of the airplane with no disposable fuel and oil) and the structural landing weight may be increased beyond the maximum approved in full compliance with applicable regulations only if the Administrator finds that—

(1) The increase is not likely to reduce seriously the structural strength;

(2) The probability of sudden fatigue failure is not noticeably increased;

(3) The flutter, deformation, and vibration characteristics do not fall below those required by applicable regulations; and

(4) All other applicable weight limitations will be met.

(c) No zero fuel weight may be increased by more than five percent, and the increase in the structural landing weight may not exceed the amount, in pounds, of the increase in zero fuel weight.

(d) Each airplane must be inspected in accordance with the approved special inspection procedures, for operations at increased weights, established and issued by the manufacturer of the type of airplane.

(e) Each airplane operated under this section must be operated in accordance with the passenger-carrying transport category performance operating limitations prescribed in this part.

(f) The Airplane Flight Manual for each airplane operated under this section must be appropriately revised to include the operating limitations and information needed for operation at the increased weights.

(g) Except as provided for the carrying of persons under § 121.583 each airplane operated at an increased weight under this section must, before it is used in passenger service, be inspected under the special inspection procedures for return to passenger service established and issued by the manufacturer and approved by the Administrator.

§ 121.199 Nontransport category airplanes: takeoff limitations.

(a) No person operating a nontransport category airplane may take off that airplane at a weight greater than the weight that would allow the airplane to be brought to a safe stop within the effective length of the runway, from any point during the takeoff before reaching 105 percent of minimum control speed (the minimum speed at which an airplane can be safely controlled in flight after an engine becomes inoperative) or 115 percent of the power off stalling speed in the takeoff configuration, whichever is greater.

(b) For the purposes of this section—

(1) It may be assumed that takeoff power is used on all engines during the acceleration;

(2) Not more than 50 percent of the reported headwind component, or not less than 150 percent of the reported tailwind component, may be taken into account;

(3) The average runway gradient (the difference between the elevations of the endpoints of the runway divided by the total length) must be considered if it is more than one-half of 1 percent; and

(4) It is assumed that the airplane is operating in standard atmosphere.

§ 121.201 Nontransport category airplanes: en route limitations: one engine inoperative.

(a) Except as provided in paragraph (b) of this section, no person operating a nontransport category airplane may take off that airplane at a weight that does not allow a rate of climb of at least 50 feet a minute, with the critical engine inoperative, at an altitude of at least 1,000 feet above the highest obstruction within five miles on each side of the intended track, or 5,000 feet, whichever is higher.

(b) Notwithstanding paragraph (a) of this section, if the Administrator finds that safe operations are not impaired, a person may operate the airplane at an altitude that allows the airplane, in case of engine failure, to clear all obstructions within 5 miles on each side of the intended track by 1,000 feet. If this procedure is used, the rate of descent for the appropriate weight and altitude is assumed to be 50 feet a minute greater than the rate in the approved performance data. Before approving such a procedure, the Administrator considers the following for the route, route segment, or area concerned:

(1) The reliability of wind and weather forecasting.

(2) The location and kinds of navigation aids.

(3) The prevailing weather conditions, particularly the frequency and amount of turbulence normally encountered.

(4) Terrain features.
(5) Air traffic control problems.
(6) Any other operational factors that affect the operation.

(c) For the purposes of this section, it is assumed that—

(1) The critical engine is inoperative;
(2) The propeller of the inoperative engine is in the minimum drag position;
(3) The wing flaps and landing gear are in the most favorable position;
(4) The operating engines are operating at the maximum continuous power available;
(5) The airplane is operating in standard atmosphere; and
(6) The weight of the airplane is progressively reduced by the anticipated consumption of fuel and oil.

§ 121.203 Nontransport category airplanes: landing limitations: destination airport.

(a) No person operating a nontransport category airplane may take off that airplane at a weight that—

(1) Allowing for anticipated consumption of fuel and oil, is greater than the weight that would allow a full stop landing within 60 percent of the effective length of the most suitable runway at the destination airport; and
(2) Is greater than the weight allowable if the landing is to be made on the runway—
(i) With the greatest effective length in still air; and
(ii) Required by the probable wind, taking into account not more than 50 percent of the headwind component or not less than 150 percent of the tailwind component.

(b) For the purposes of this section, it is assumed that—

(1) The airplane passes directly over the intersection of the obstruction clearance plane and the runway at a height of 50 feet in a steady gliding approach at a true indicated airspeed of at least $1.3\ V_{S_0}$;
(2) The landing does not require exceptional pilot skill; and
(3) The airplane is operating in standard atmosphere.

§ 121.205 Nontransport category airplanes: landing limitations: alternate airport.

No person may list an airport as an alternate airport in a dispatch or flight release for a nontransport category airplane unless that airplane (at the weight anticipated at the time of arrival) based on the assumptions contained in § 121.203, can be brought to a full stop landing within 70 percent of the effective length of the runway.

§ 121.207 Provisionally certificated air carrier airplane: operating limitations.

In addition to the limitations in §91.41, the following limitations apply to the operation of provisionally certificated airplane by air carriers:

(a) In addition to crewmembers, each air carrier may carry on such an airplane only those persons who are listed in §121.547(c) or who are specifically authorized by both the air carrier and the Administrator.

(b) Each air carrier shall keep a log of each flight conducted under this section and shall keep accurate and complete records of each inspection made and all maintenance performed on the airplane. The air carrier shall make the log and records made under this section available to the manufacturer and the Administrator.

Subpart J—Special Airworthiness Requirements

§ 121.211 Applicability.

This subpart prescribes special airworthiness requirements for all certificate holders.

§ 121.213 Special airworthiness requirements: general.

(a) Except as provided in paragraph (b) of this section, no air carrier or commercial operator may use an airplane powered by aircraft engines rated at more than 600 horsepower each for maximum continuous operation unless that airplane meets the requirements of §§ 121.215 through 121.283.

(b) If the Administrator determines that, for a particular model of airplane used in cargo service, literal compliance with any requirement under paragraph (a) of this section would be extremely difficult and that compliance would not contribute materially to the objective sought, he may require compliance with only those requirements that are necessary to accomplish the basic objectives of this part.

(c) This section does not apply to any airplane certificated under—

(1) Part 4b of the Civil Air Regulations as in effect after October 31, 1946;
(2) Part 25; or
(3) Special Civil Air Regulation 422, 422A, or 422B.

§ 121.215 Cabin interiors.

(a) Each compartment used by the crew or passengers must meet the requirements of this section.

(b) Materials must be at least flash resistant.

(c) The wall and ceiling linings and the covering of upholstering, floors, and furnishings must be flame resistant.

(d) Each compartment where smoking is to be allowed must be equipped with self-contained ash trays that are completely removable and other compartments must be placarded against smoking.

(e) Each receptacle for used towels, papers, and wastes must be of fire-resistant material and must have a cover or other means of containing possible fires started in the receptacles.

§ 121.217 Internal doors.

In any case where internal doors are equipped with louvres or other ventilating means, there must be a means convenient to the crew for closing the flow of air through the door when necessary.

§ 121.219 Ventilation.

Each passenger or crew compartment must be suitably ventilated. Carbon monoxide concentration may not be more than one part in 20,000 parts of air, and fuel fumes may not be present. In any case where partitions between compartments have louvres or other means allowing air to flow between compartments, there must be a means convenient to the crew for closing the flow of air through the partitions, when necessary.

§ 121.221 Fire precautions.

(a) Each compartment must be designed so that, when used for storing cargo or baggage, it meets the following requirements:

(1) No compartment may include controls, wiring, lines, equipment, or accessories that would upon damage or failure, affect the safe operation of the airplane unless the item is adequately shielded, isolated, or otherwise protected so that it cannot be damaged by movement of cargo in the compartment and so that damage to or failure of the item would not create a fire hazard in the compartment.
(2) Cargo or baggage may not interfere with the functioning of the fire-protective features of the compartment.
(3) Materials used in the construction of the compartments, including tie-down equipment, must be at least flame resistant.
(4) Each compartment must include provisions for safeguarding against fires according to the classifications set forth in paragraphs (b) through (f) of this section.

(b) *Class A.* Cargo and baggage compartments are classified in the "A" category if—

(1) A fire therein would be readily discernible to a member of the crew while at his station; and
(2) All parts of the compartment are easily accessible in flight.

There must be a hand fire extinguisher available for each Class A compartment.

(c) *Class B.* Cargo and baggage compartments are classified in the "B" category if enough access is provided while in flight to enable a member of the crew to effectively reach all of the compartment and its contents with a hand fire extinguisher and the compartment is so designed that, when the access provisions are being used, no hazardous amount of smoke, flames, or extinguishing agent enters any compartment occupied by the crew or passengers. Each Class B compartment must comply with the following:

(1) It must have a separate approved smoke or fire detector system to give warning at the pilot or flight engineer stations.
(2) There must be a hand fire extinguisher available for the compartment.
(3) It must be lined with fire-resistant material, except that additional service lining of flame-resistant material may be used.

(d) *Class C.* Cargo and baggage compartments are classified in the "C" category if they do not conform with the requirements for the "A", "B", "D", or "E" categories. Each Class C compartment must comply with the following:

(1) It must have a separate approved smoke or fire detector system to give warning at the pilot or flight engineer station.

(2) It must have an approved built-in fire-extinguishing system controlled from the pilot or flight engineer station.

(3) It must be designed to exclude hazardous quantities of smoke, flames, or extinguishing agents from entering into any compartment occupied by the crew or passengers.

(4) It must have ventilation and draft controlled so that the extinguishing agent provided can control any fire that may start in the compartment.

(5) It must be lined with fire-resistant material, except that additional service lining of flame-resistant material may be used.

(e) *Class D.* Cargo and baggage compartments are classified in the "D" category if they are so designed and constructed that a fire occurring therein will be completely confined without endangering the safety of the airplane or the occupants. Each Class D compartment must comply with the following:

(1) It must have a means to exclude hazardous quantities of smoke, flames, or noxious gases from entering any compartment occupied by the crew or passengers.

(2) Ventilation and drafts must be controlled within each compartment so that any fire likely to occur in the compartment will not progress beyond safe limits.

(3) It must be completely lined with fire-resistant material.

(4) Consideration must be given to the effect of heat within the compartment on adjacent critical parts of the airplane.

(f) *Class E.* On airplanes used for the carriage of cargo only, the cabin area may be classified as a Class "E" compartment. Each Class E compartment must comply with the following:

(1) It must be completely lined with fire-resistant material.

(2) It must have a separate system of an approved type smoke or fire detector to give warning at the pilot or flight engineer station.

(3) It must have a means to shut off the ventilating air flow to or within the compartment and the controls for that means must be accessible to the flight crew in the crew compartment.

(4) It must have a means to exclude hazardous quantities of smoke, flames, or noxious gases from entering the flight crew compartment.

(5) Required crew emergency exits must be accessible under all cargo loading conditions.

§ 121.223 Proof of compliance with § 121.221.

Compliance with those provisions of § 121.221 that refer to compartment accessibility, the entry of hazardous quantities of smoke or extinguishing agent into compartments occupied by the crew or passengers, and the dissipation of the extinguishing agent in Class "C" compartments must be shown by tests in flight. During these tests it must be shown that no inadvertent operation of smoke or fire detectors in other compartments within the airplane would occur as a result of fire contained in any one compartment, either during the time it is being extinguished, or thereafter, unless the extinguishing system floods those compartments simultaneously.

§ 121.225 Propeller deicing fluid.

If combustible fluid is used for propeller deicing, the certificate holder must comply with § 121.253.

§ 121.227 Pressure cross-feed arrangements.

(a) Pressure cross-feed lines may not pass through parts of the airplane used for carrying persons or cargo unless—

(1) There is a means to allow crewmembers to shut off the supply of fuel to these lines; or

(2) The lines are enclosed in a fuel and fume-proof enclosure that is ventilated and drained to the exterior of the airplane.

However, such an enclosure need not be used if those lines incorporate no fittings on or within the personnel or cargo areas and are suitably routed or protected to prevent accidental damage.

(b) Lines that can be isolated from the rest of the fuel system by valves at each end must incorporate provisions for relieving excessive pressures that may result from exposure of the isolated line to high temperatures.

§ 121.229 Location of fuel tanks.

(a) Fuel tanks must be located in accordance with § 121.255.

(b) No part of the engine nacelle skin that lies immediately behind a major air outlet from the engine compartment may be used as the wall of an integral tank.

(c) Fuel tanks must be isolated from personnel compartments by means of fume- and fuel-proof enclosures.

§ 121.231 Fuel system lines and fittings.

(a) Fuel lines must be installed and supported so as to prevent excessive vibration and so as to be adequate to withstand loads due to fuel pressure and accelerated flight conditions.

(b) Lines connected to components of the airplanes between which there may be relative motion must incorporate provisions for flexibility.

(c) Flexible connections in lines that may be under pressure and subject to axial loading must use flexible hose assemblies rather than hose clamp connections.

(d) Flexible hose must be of an acceptable type or proven suitable for the particular application.

§ 121.233 Fuel lines and fittings in designated fire zones.

Fuel lines and fittings in each designated fire zone must comply with § 121.259.

§ 121.235 Fuel valves.

Each fuel valve must—

(a) Comply with § 121.257;

(b) Have positive stops or suitable index provisions in the "on" and "off" positions; and

(c) Be supported so that loads resulting from its operation or from accelerated flight conditions are not transmitted to the lines connected to the valve.

§ 121.237 Oil lines and fittings in designated fire zones.

Oil line and fittings in each designated fire zone must comply with § 121.259.

§ 121.239 Oil valves.

(a) Each oil valve must—

(1) Comply with § 121.257;

(2) Have positive stops or suitable index provisions in the "on" and "off" positions; and

(3) Be supported so that loads resulting from its operation or from accelerated flight conditions are not transmitted to the lines attached to the valve.

(b) The closing of an oil shutoff means must not prevent feathering the propeller, unless equivalent safety provisions are incorporated.

§ 121.241 Oil system drains.

Accessible drains incorporating either a manual or automatic means for positive locking in the closed position, must be provided to allow safe drainage of the entire oil system.

§ 121.243 Engine breather lines.

(a) Engine breather lines must be so arranged that condensed water vapor that may freeze and obstruct the line cannot accumulate at any point.

(b) Engine breathers must discharge in a location that does not constitute a fir hazard in case foaming occurs and so that oil emitted from the line does not impinge upon the pilots' windshield.

(c) Engine breathers may not discharge into the engine air induction system.

§ 121.245 Fire walls.

Each engine, auxiliary power unit, fuel-burning heater, or other item of combustion equipment that is intended for operation in flight must be isolated from the rest of the airplane by means of firewalls or shrouds, or by other equivalent means.

§ 121.247 Fire-wall construction.

Each fire wall and shroud must—

(a) Be so made that no hazardous quantity of air, fluids, or flame can pass from the engine compartment to other parts of the airplane;

(b) Have all openings in the fire wall or shroud sealed with close-fitting fireproof grommets, bushings, or firewall fittings;

(c) Be made of fireproof material; and

(d) Be protected against corrosion.

§ 121.249 Cowling.

(a) Cowling must be made and supported so as to resist the vibration, inertia, and air loads to which it may be normally subjected.

(b) Provisions must be made to allow rapid and complete drainage of the cowling in normal ground and flight attitudes. Drains must not discharge in locations constituting a fire hazard. Parts of the cowling that are subjected to high temperatures because they are near exhaust system parts or because of exhaust gas impingement must be made of fireproof material. Unless otherwise specified in these regulations,

all other parts of the cowling must be made of material that is at least fire resistant.

§ 121.251 Engine accessory section diaphragm.

Unless equivalent protection can be shown by other means, a diaphragm that complies with § 121.247 must be provided on air-cooled engines to isolate the engine power section and all parts of the exhaust system from the engine accessory compartment.

§ 121.253 Powerplant fire protection.

(a) Designated fire zones must be protected from fire by compliance with §§ 121.255 through 121.261.

(b) Designated fire zones are—

(1) Engine accessory sections;

(2) Installations where no isolation is provided between the engine and accessory compartment; and

(3) Areas that contain auxiliary power units, fuel-burning heaters, and other combustion equipment.

§ 121.255 Flammable fluids.

(a) No tanks or reservoirs that are a part of a system containing flammable fluids or gases may be located in designated fire zones, except where the fluid contained, the design of the system, the materials used in the tank, the shutoff means, and the connections, lines, and controls provide equivalent safety.

(b) At least one-half inch of clear airspace must be provided between any tank or reservoir and a firewall or shroud isolating a designated fire zone.

§ 121.257 Shutoff means.

(a) Each engine must have a means for shutting off or otherwise preventing hazardous amounts of fuel, oil, deicer, and other flammable fluids from flowing into, within, or through any designated fire zone. However, means need not be provided to shut off flow in lines that are an integral part of an engine.

(b) The shutoff means must allow an emergency operating sequence that is compatible with the emergency operation of other equipment, such as feathering the propeller, to facilitate rapid and effective control of fires.

(c) Shutoff means must be located outside of designated fire zones, unless equivalent safety is provided, and it must be shown that no hazardous amount of flammable fluid will drain into any designated fire zone after a shut off.

(d) Adequate provisions must be made to guard against inadvertent operation of the shutoff means and to make it possible for the crew to reopen the shutoff means after it has been closed.

§ 121.259 Lines and fittings.

(a) Each line, and its fittings, that is located in a designated fire zone, if it carries flammable fluids or gases under pressure, or is attached directly to the engine, or is subject to relative motion between components (except lines and fittings forming an integral part of the engine), must be flexible and fire-resistant with fire-resistant, factory-fixed, detachable, or other approved fire-resistant ends.

(b) Lines and fittings that are not subject to pressure or to relative motion between components must be of fire-resistant materials.

§ 121.261 Vent and drain lines.

All vent and drain lines and their fittings, that are located in a designated fire zone must, if they carry flammable fluids or gases, comply with § 121.259, if the Administrator finds that the rupture or breakage of any vent or drain line may result in a fire hazard.

§ 121.263 Fire-extinguishing systems.

(a) Unless the certificate holder shows that equivalent protection against destruction of the airplane in case of fire is provided by the use of fireproof materials in the nacelle and other components that would be subjected to flame, fire-extinguishing systems must be provided to serve all designated fire zones.

(b) Materials in the fire-extinguishing system must not react chemically with the extinguishing agent so as to be a hazard.

§ 121.265 Fire-extinguishing agents.

Only methyl bromide, carbon dioxide, or another agent that has been shown to provide equivalent extinguishing action may be used as a fire-extinguishing agent. If methyl bromide or any other toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid or fluid vapors from entering any personnel compartment either because of leakage during normal operation of the airplane or because of discharging the fire extinguisher on the ground or in flight when there is a defect in the extinguishing system. If a methyl bromide system is used, the containers must be charged with dry agent and sealed by the fire-extinguisher manufacturer or some other person using satisfactory recharging equipment. If carbon dioxide is used, it must not be possible to discharge enough gas into the personnel compartments to create a danger of suffocating the occupants.

§ 121.267 Extinguishing agent container pressure relief.

Extinguishing agent containers must be provided with a pressure relief to prevent bursting of the container because of excessive internal pressures. The discharge line from the relief connection must terminate outside the airplane in a place convenient for inspection on the ground. An indicator must be provided at the discharge end of the line to provide a visual indication when the container has discharged.

§ 121.269 Extinguishing agent container compartment temperature.

Precautions must be taken to insure that the extinguishing agent containers are installed in places where reasonable temperatures can be maintained for effective use of the extinguishing system.

§ 121.271 Fire-extinguishing system materials.

(a) Except as provided in paragraph (b) of this section, each component of a fire-extinguishing system that is in a designated fire zone must be made of fireproof materials.

(b) Connections that are subject to relative motion between components of the airplane must be made of flexible materials that are at least fire-resistant and be located so as to minimize the probability of failure.

§ 121.273 Fire-detector systems.

Enough quick-acting fire detectors must be provided in each designated fire zone to assure the detection of any fire that may occur in that zone.

§ 121.275 Fire detectors.

Fire detectors must be made and installed in a manner that assures their ability to resist, without failure, all vibration, inertia, and other loads to which they may be normally subjected. Fire detectors must be unaffected by exposure to fumes, oil, water, or other fluids that may be present.

§ 121.277 Protection of other airplane components against fire.

(a) Except as provided in paragraph (b) of this section, all airplane surfaces aft of the nacelles in the area of one nacelle diameter on both sides of the nacelle centerline must be made of material that is at least fire resistant.

(b) Paragraph (a) of this section does not apply to tail surfaces lying behind nacelles unless the dimensional configuration of the airplane is such that the tail surfaces could be affected readily by heat, flames, or sparks emanating from a designated fire zone or from the engine compartment of any nacelle.

§ 121.279 Control of engine rotation.

(a) Except as provided in paragraph (b) of this section, each airplane must have a means of individually stopping and restarting the rotation of any engine in flight.

(b) In the case of turbine engine installations, a means of stopping the rotation need be provided only if the Administrator finds that rotation could jeopardize the safety of the airplane.

§ 121.281 Fuel system independence.

(a) Each airplane fuel system must be arranged so that the failure of any one component does not result in the irrecoverable loss of power of more than one engine.

(b) A separate fuel tank need not be provided for each engine if the certificate holder shows that the fuel system incorporates features that provide equivalent safety.

§ 121.283 Induction system ice prevention.

A means for preventing the malfunctioning of each engine due to ice accumulation in the engine air induction system must be provided for each airplane.

§ 121.285 Carriage of cargo in passenger compartments.

(a) Except as provided in paragraph (b) or (c) of this section, no certificate holder may carry cargo in the passenger compartment of an airplane.

(b) Cargo may be carried aft of the foremost seated passengers if it is carried in an approved cargo bin that meets the following requirements:

(1) The bin must withstand the load factors and emergency landing conditions applicable to the passenger seats of the airplane in which the bin is installed, multiplied by a factor of 1.15, using the combined weight of the bin and the maximum weight of cargo that may be carried in the bin.

(2) The maximum weight of cargo that the bin is approved to carry and any instructions necessary to insure proper weight distribution within the bin must be conspicuously marked on the bin.

(3) The bin may not impose any load on the floor or other structure of the airplane that exceeds the load limitations of that structure.

(4) The bin must be attached to the seat tracks or to the floor structure of the airplane, and its attachment must withstand the load factors and emergency landing conditions applicable to the passenger seats of the airplane in which the bin is installed, multiplied by either the factor 1.15 or the seat attachment factor specified for the airplane, whichever is greater, using the combined weight of the bin and the maximum weight of cargo that may be carried in the bin.

(5) The bin may not be installed in a position that restricts access to or use of any required emergency exit, or of the aisle in the passenger compartment.

(6) The bin must be fully enclosed and made of material that is at least flame resistant.

(7) Suitable safeguards must be provided within the bin to prevent the cargo from shifting under emergency landing conditions.

(8) The bin may not be installed in a position that obscures any passenger's view of the "seat belt" sign "no smoking" sign, or any required exit sign, unless an auxiliary sign or other approved means for proper notification of the passenger is provided.

(c) Cargo may be carried forward of the foremost seated passengers if carried either in approved cargo bins as specified in paragraph (b) of this section, or in accordance with the following:

(1) It is properly secured by a safety belt or other tiedown having enough strength to eliminate the possibility of shifting under all normally anticipated flight and ground conditions.

(2) It is packaged or covered in a manner to avoid possible injury to passengers.

(3) It does not impose any load on seats or the floor structure that exceeds the load limitation for those components.

(4) Its location does not restrict access to or use of any required emergency or regular exit, or of the aisle in the passenger compartment.

(5) Its location does not obscure any passenger's view of the "seat belt" sign, "no smoking" sign, or required exit sign, unless an auxiliary sign or other approved means for proper notification of the passenger is provided.

§ 121.287 Carriage of cargo in cargo compartments.

When cargo is carried in cargo compartments that are designed to require the physical entry of a crewmember to extinguish any fire that may occur during flight, the cargo must be loaded so as to allow a crewmember to effectively reach all parts of the compartment with the contents of a hand fire extinguisher.

§ 121.289 Landing gear: aural warning device.

(a) Except as provided in paragraph (d) of this section, after April 30, 1965, each large landplane must have a landing gear aural warning device that functions continuously:

(1) For airplanes with an established approach wing-flap position, whenever the wing flaps are extended beyond the maximum certificated approach climb configuration position in the Airplane Flight Manual and the landing gear is not fully extended and locked.

(2) For airplanes without an established approach climb wing-flap position, whenever the wing flaps are extended beyond the position at which landing gear extension is normally performed and the landing gear is not fully extended and locked.

(b) The warning system required by paragraph (a) of this section—

(1) May not have a manual shutoff;

(2) Must be in addition to the throttle-actuated device installed under the type certification airworthiness requirements; and

(3) May utilize any part of the throttle-actuated system including the aural warning device.

(c) The flap position sensing unit may be installed at any suitable place in the airplane.

Subpart K—Instrument and Equipment Requirements

§ 121.301 Applicability.

This subpart prescribes instrument and equipment requirements for all certificate holders.

§ 121.303 Airplane instruments and equipment.

(a) Unless otherwise specified, the instrument and equipment requirements of this subpart apply to all operations under this part.

(b) Instruments and equipment required by §§ 121.305 through 121.351 must be approved and installed in accordance with the airworthiness requirements applicable to them.

(c) Each airspeed indicator must be calibrated in knots, and each airspeed limitation and item of related information in the Airplane Flight Manual and pertinent placards must be expressed in knots.

(d) Except as provided in § 121.627 (b) and (c), no person may take off any airplane unless the following instruments and equipment are in operable condition:

(1) Instruments and equipment required to comply with airworthiness requirements under which the airplane is type certificated and as required by §§ 121.213 through 121.283 and 121.289.

(2) Instruments and equipment specified in §§ 121.305 through 121.321 for all operations, and the instruments and equipment specified in §§ 121.323 through 121.351 for the kind of operation indicated, wherever these items are not already required by subparagraph (1) of this paragraph.

§ 121.305 Flight and navigational equipment.

No person may operate an airplane unless it is equipped with the following flight and navigational instruments and equipment:

(a) An airspeed indicating system with heated pitot tube or equivalent means for preventing malfunctioning due to icing.

(b) A sensitive altimeter.

(c) A sweep-second hand clock.

(d) A free-air temperature indicator.

(e) A gyroscopic bank and pitch indicator (artificial horizon).

(f) A gyroscopic rate-of-turn indicator combined with a slip-skid indicator (turn-and-bank indicator).

(g) A gyroscopic direction indicator (directional gyro or equivalent).

(h) A magnetic compass.

(i) A vertical speed indicator (rate-of-climb indicator).

§ 121.307 Engine instruments.

Unless the Administrator allows or requires different instrumentation for turbine engine powered airplanes to provide equivalent safety, no person may conduct any operation under this part without the following engine instruments:

(a) A carburetor air temperature indicator for each engine.

(b) A cylinder head temperature indicator for each air-cooled engine.

(c) A fuel pressure indicator for each engine.

(d) A fuel flowmeter or fuel mixture indicator for each engine not equipped with an automatic altitude mixture control.

(e) A means for indicating fuel quantity in each fuel tank to be used.

(f) A manifold pressure indicator for each engine.

(g) An oil pressure indicator for each engine.

(h) An oil quantity indicator for each oil tank when a transfer or separate oil reserve supply is used.

(i) An oil-in temperature indicator for each engine.

(j) A tachometer for each engine.

(k) An independent fuel pressure warning device for each engine or a master warning device for all engines with a means for isolating the individual warning circuits from the master warning device.

(l) A device for each reversible propeller, to indicate to the pilot when the propeller is in reverse pitch, that complies with the following:

(1) The device may be actuated at any point in the reversing cycle between the normal low pitch stop position and full reverse pitch, but it may not give an

indication at or above the normal low pitch stop position.

(2) The source of indication must be actuated by the propeller blade angle or be directly responsive to it.

§ 121.309 Emergency equipment.

(a) *General.* No person may operate an airplane unless it is equipped with the emergency equipment listed in this section.

(b) Each item of emergency equipment—

(1) Must be inspected regularly in accordance with inspection periods established in the operations specifications to insure its continued serviceability and immediate readiness for its intended emergency purposes;

(2) Must be readily accessible to the crew;

(3) Must clearly indicate its method of operation; and

(4) When carried in a compartment or container, must have that compartment or container marked as to contents and date of last inspection.

(c) *Hand fire extinguishers for crew, passenger, and cargo compartments.* Hand fire extinguishers of an approved type must be provided for use in crew, passenger, and cargo compartments in accordance with the following:

(1) The type and quantity of extinguishing agent must be suitable for the kinds of fires likely to occur in the compartment where the extinguisher is intended to be used.

(2) At least one hand fire extinguisher must be provided and conveniently located on the flight deck for use by the flight crew.

(3) At least one hand fire extinguisher must be conveniently located in the passenger compartment of each airplane accommodating more than 6 but less than 31 passengers, and at least two hand fire extinguishers must be conveniently located in each airplane accommodating more than 30 passengers.

(d) *First-aid equipment.* Approved first-aid kits for treatment of injuries likely to occur in flight or in minor accidents must be provided and must meet the specifications and requirements of Appendix A.

(e) *Crash ax.* Each airplane must be equipped with a crash ax.

(f) *Means for emergency evacuation.* Each passenger-carrying airplane must have a means to help occupants descend from the airplane through each emergency exit that is more than six feet from the ground with the landing gear extended. At approved floor level emergency exits, this means must be a chute or equivalent device suitable for rapid evacuation of passengers and must be in position during flight time for immediate installation and ready use. This paragraph does not apply if the emergency exit is over a wing and the distance from the lower sill of the exit to the surface of the wing is 36 inches or less. However, this paragraph does not require a means to help the occupants of a passenger-carrying DC–3 airplane in descending from the airplane by way of the rear window emergency exit, unless that airplane is operated with more occupants than are specified in § 121.291 for DC–3 airplanes with four exits authorized for passenger use.

(g) *Interior emergency exit markings.* Each passenger-carrying airplane emergency exit, its means of access, and its means of opening, must be conspicuously marked. The identity and location of each emergency exit must be recognizable from a distance equal to the width of the cabin. The location of the emergency exit operating handle and the instructions for opening must be marked on or adjacent to the emergency exit and must be readable from at least 30 inches by a person with normal eyesight.

(h) *Lighting for interior emergency exit markings.* Each passenger-carrying airplane must have a source or sources of light with an energy supply that is independent of the main lighting system for passenger emergency exit markings. Each light must be designed to—

(1) Function automatically in a crash landing, to continue functioning thereafter, and to be manually operable; or

(2) Be manually operable only and to continue functioning after a crash landing.

If a light requires manual operation, it must be turned on before each takeoff and landing. If a light requires arming of the system to function automatically, the system must be armed before each takeoff and landing.

§ 121.311 Seat and safety belts.

(a) No certificate holder may operate an airplane unless there are available during the takeoff, en route flight, and landing—

(1) An approved seat or berth for each person over 2 years of age aboard the airplane; and

(2) An approved safety belt for separate use by each person over 2 years of age aboard the airplane, except that two persons occupying a berth may share one approved safety belt and two persons occupying a multiple lounge or divan seat may share one approved safety belt during en route flight only.

(b) During the takeoff or landing of an airplane, each person on board shall occuppy an approved seat or berth and secure himself with the approved safety belt provided him. However, a person who is 2 years of age or less may be held by an adult who is occupying a seat or berth. A safety belt provided for the occupant of a seat may not be used by more than one adult during takeoff or landing.

§ 121.313 Miscellaneous equipment.

No person may conduct any operation unless the following equipment is installed in the airplane:

(a) If protective fuses are installed on an airplane, the number of spare fuses approved for that airplane and appropriately described in the certificate holder's manual.

(b) A windshield wiper or equivalent for each pilot station.

(c) A power supply and distribution system that meets the requirements of §§ 25.1309, 25.1331, 25.1351(a) and (b)(1) through (4), 25.1353, 25.1355, and 25.1431 (b) or that is able to produce and distribute the load for the required instruments and equipment, with use of an external power supply if any one power source or component of the power distribution system fails. The use of common elements in the system may be approved if the Administrator finds that they are designed to be reasonably protected against malfunctioning. Engine-driven sources of energy, when used, must be on separate engines.

(d) A means for indicating the adequacy of the power being supplied to required flight instruments.

(e) Two independent static pressure systems, vented to the outside atmospheric pressure so that they will be least affected by air flow variation or moisture or other foreign matter, and installed so as to be airtight except for the vent. When a means is provided for transferring an instrument from its primary operating system to an alternate system, the means must include a positive positioning control and must be marked to indicate clearly which system is being used.

(f) A means for locking all companionway doors that separate passenger compartments from flight crew compartments.

(g) A key for each door that separates a passenger compartment from another compartment that has emergency exit provisions. The key must be readily available for each crewmember.

(h) A placard on each door that is the means of access to a required passenger emergency exit, to indicate that it must be open during takeoff and landing.

(i) A means for the crew, in an emergency to unlock each door that leads to a compartment that is normally accessible to passengers and that can be locked by passengers.

§ 121.315 Cockpit check procedure.

(a) Each certificate holder shall provide an approved cockpit check procedure for each type of aircraft.

(b) The approved procedures must include each item necessary for flight crewmembers to check for safety before starting engines, taking off, or landing, and in engine and systems emergencies. The procedures must be designed so that a flight crewmember will not need to rely upon his memory for items to be checked.

(c) The approved procedures must be readily usable in the cockpit of each aircraft and the flight crew shall follow them when operating the aircraft.

§ 121.317 Passenger information.

(a) No person may operate an airplane unless it is equipped with signs that are visible to passengers and cabin attendants to notify them when smoking is prohibited and when safety belts should be fastened. The signs must be so constructed that the crew can turn them on and off. They must be turned on for each takeoff and each landing and when otherwise considered to be necessary by the pilot in command.

(b) No passenger or cabin attendant may smoke while the no smoking sign is lighted and each passenger shall fasten his seat belt and keep it fastened while the seat belt sign is lighted.

§ 121.319 Exterior exits and evacuation markings.

No person may operate an airplane unless the exterior surfaces of the airplane are marked to clearly identify each required emergency exit. If the exits are operable from the outside, the markings must consist of or include information indicating the method of opening.

§ 121.321 Shoulder harness.

No person may operate a transport category airplane that was certificated after January 1, 1958, unless it is equipped with a shoulder harness at the pilot in command station, the second in command station, and the flight engineer station.

§ 121.323 Instruments and equipment for operations at night.

No person may operate an airplane at night unless it is equipped with the following instruments and equipment in addition to those required by §§ 121.305 through 121.321:

(a) Position lights.

(b) An anti-collision light, for large airplanes.

(c) Two landing lights.

(d) Instrument lights providing enough light to make each required instrument, switch, or similar instrument, easily readable and installed so that the direct rays are shielded from the flight crewmembers' eyes and that no objectionable reflections are visible to them. There must be a means of controlling the intensity of illumination unless it is shown that nondimming instrument lights are satisfactory.

(e) An airspeed-indicating system with heated pitot tube or equivalent means for preventing malfunctioning due to icing.

(f) A sensitive altimeter.

§ 121.325 Instruments and equipment for operations under IFR or over-the-top.

No person may operate an airplane under IFR or over-the-top conditions unless it is equipped with the following instruments and equipment, in addition to those required by §§ 121.305 through 121.321:

(a) An airspeed indicating system with heated pitot tube or equivalent means for preventing malfunctioning due to icing.

(b) A sensitive altimeter.

(c) Instrument lights providing enough light to make each required instrument, switch, or similar instrument, easily readable and so installed that the direct rays are shielded from the flight crewmembers' eyes and that no objectionable reflections are visible to them, and a means of controlling the intensity of illumination unless it is shown that nondimming instrument lights are satisfactory.

§ 121.327 Supplemental oxygen; reciprocating engine powered airplanes.

(a) *General.* Except where supplemental oxygen is provided in accordance with § 121.331, no person may operate an airplane unless supplemental oxygen is furnished and used as set forth in paragraphs (b) and (c) of this section. The amount of supplemental oxygen required for a particular operation is determined on the basis of flight altitudes and flight duration, consistent with the operation procedures established for each operation and route.

(b) *Crewmembers.* (1) At cabin pressure altitudes above 10,000 feet up to and including 12,000 feet, oxygen must be provided for, and used by, each member of the flight crew on flight deck duty, and must be provided for other crewmembers, for that part of the flight at those altitudes that is of more than 30 minutes duration.

(2) At cabin pressure altitudes above 12,000 feet, oxygen must be provided for, and used by, each member of the flight crew on flight deck duty, and must be provided for other crewmembers, during the entire flight time at those altitudes.

(3) When a flight crewmember is required to use oxygen, he must use it continuously, except when necessary to remove the oxygen mask or other dispenser in connection with his regular duties. Standby crewmembers who are on call or are definitely going to have flight deck duty before completing the flight must be provided with an amount of supplemental oxygen equal to that provided for crewmembers on duty other than on flight deck duty. If a standby crewmember is not on call and will not be on flight deck duty during the remainder of the flight, he is considered to be a passenger for the purposes of supplemental oxygen requirements.

(c) *Passengers.* Each certificate holder shall provide a supply of oxygen, approved for passenger safety, in accordance with the following:

(1) For flights of more than 30 minutes duration at cabin pressure altitudes above 8,000 feet up to and including 14,000 feet, enough oxygen for 30 minutes for 10 percent of the passengers.

(2) For flights at cabin pressure altitudes above 14,000 feet up to and including 15,000 feet, enough oxygen for that part of the flight at those altitudes for 30 percent of the passengers.

(3) For flights at cabin pressure altitudes above 15,000 feet, enough oxygen for each passenger carried during the entire flight at those altitudes.

(d) For the purposes of this subpart "cabin pressure altitude" means the pressure altitude corresponding with the pressure in the cabin of the airplane, and "flight altitude" means the altitude above sea level at which the airplane is operated. For airplanes without pressurized cabins, "cabin pressure altitude" and "flight altitude" mean the same thing.

§ 121.329 Supplemental oxygen for sustenance; turbine engine powered airplanes.

(a) *General.* When operating a turbine engine powered airplane, each certificate holder shall equip the airplane with sustaining oxygen and dispensing equipment for use as set forth in this section:

(1) The amount of oxygen provided must be at least the quantity necessary to comply with paragraphs (b) and (c) of this section.

(2) The amount of sustaining and first-aid oxygen required for a particular operation to comply with the rules in this part is determined on the basis of cabin pressure altitudes and flight duration, consistent with the operating procedures established for each operation and route.

(3) The requirements for airplanes with pressurized cabins are determined on the basis of cabin pressure altitude and the assumption that a cabin pressurization failure will occur at the altitude or point of flight that is most critical from the standpoint of oxygen need, and that after the failure the airplane will descend in accordance with the emergency procedures specified in the Airplane Flight Manual, without exceeding its operating limitations, to a flight altitude that will allow successful termination of the flight.

(4) Following the failure, the cabin pressure altitude is considered to be the same as the flight altitude unless it is shown that no probable failure of the cabin or pressurization equipment will result in a cabin pressure altitude equal to the flight altitude. Under those circumstances, the maximum cabin pressure altitude attained may be used as a basis for certification or determination of oxygen supply, or both.

(b) *Crewmembers.* Each certificate holder shall provide a supply of oxygen for crewmembers in accordance with the following:

(1) At cabin pressure altitudes above 10,000 feet, up to and including 12,000 feet, oxygen must be provided for and used by each member of the flight crew on flight deck duty and must be provided for other crewmembers for that part of the flight at those altitudes that is of more than 30 minutes duration.

(2) At cabin pressure altitudes above 12,000 feet, oxygen must be provided for, and used by, each member of the flight crew on flight deck duty, and must be provided for other crewmembers during the entire flight at those altitudes.

(3) When a flight crewmember is required to use oxygen, he must use it continuously except when necessary to remove the oxygen mask or other dispenser in connection with his regular duties. Standby crewmembers who are on call or are definitely going to have flight deck duty before completing the flight must be provided with an amount of supplemental oxygen equal to that provided for crewmembers on duty other than on flight duty. If a standby crewmember is not on call and will not be on flight deck duty during the remainder of the flight, he is considered to be a passenger for the purposes of supplemental oxygen requirements.

(c) *Passengers.* Each certificate holder shall provide a supply of oxygen for passengers in accordance with the following:

(1) For flights at cabin pressure altitudes above 10,000 feet, up to and including 14,000 feet, enough oxygen for that part of the flight at those altitudes that is of more than 30 minutes duration, for 10 percent of the passengers.

(2) For flights at cabin pressure altitudes above 14,000 feet, up to and includ-

ing 15,000 feet, enough oxygen for that part of the flight at those altitudes for 30 percent of the passengers.

(3) For flights at cabin pressure altitudes above 15,000 feet, enough oxygen for each passenger carried during the entire flight at those altitudes.

§ 121.331 Supplemental oxygen requirements for pressurized cabin airplanes: reciprocating engine powered airplanes.

(a) When operating a reciprocating engine powered airplane pressurized cabin, each certificate holder shall equip the airplane to comply with paragraphs (b) through (d) of this section in the event of cabin pressurization failure.

(b) *For crewmembers.* When operating at flight altitudes above 10,000 feet, the certificate holder shall provide enough oxygen for each crewmember for the entire flight at those altitudes and not less than a two-hour supply for each flight crewmember on flight deck duty. The oxygen required by § 121.337 may be considered in determining the supplemental breathing supply required for flight crewmembers on flight deck duty in the event of cabin pressurization failure.

(c) *For passengers.* When operating at flight altitudes above 8,000 feet, the certificate holder shall provide oxygen as follows:

(1) When an airplane is not flown at a flight altitude above flight level 250, enough oxygen for 30 minutes for 10 percent of the passengers, if at any point along the route to be flown the airplane can safely descend to a flight altitude of 14,000 feet or less within four minutes.

(2) If the airplane cannot descend to a flight altitude of 14,000 feet or less within four minutes, the following supply of oxygen must be provided:

(i) For that part of the flight that is more than four minutes duration at flight altitudes above 15,000 feet, the supply required by § 121.327(c)(3).

(ii) For that part of the flight at flight altitudes above 14,000 feet, up to and including 15,000 feet, the supply required by § 121.327(c)(2).

(iii) For flight at flight altitudes above 8,000 feet up to and including 14,000 feet, enough oxygen for 30 minutes for 10 percent of the passengers.

(3) When an airplane is flown at a flight altitude above flight level 250, enough oxygen for 30 minutes for 10 percent of the passengers for the entire flight (including emergency descent) above 8,000 feet, up to and including 14,000 feet, and to comply with § 121.327(c) (2) and (3) for flight above 14,000 feet.

(d) For the purposes of this section it is assumed that the cabin pressurization failure occurs at a time during flight that is critical from the standpoint of oxygen need and that after the failure the airplane will descend, without exceeding its normal operating limitations, to flight altitudes allowing safe flight with respect to terrain clearance.

§ 121.333 Supplemental oxygen for emergency descent and for first aid; turbine engine powered airplanes with pressurized cabins.

(a) *General.* When operating a turbine engine powered airplane with a pressurized cabin, the certificate holder shall furnish oxygen and dispensing equipment to comply with paragraphs (b) through (e) of this section in the event of cabin pressurization failure.

(b) *Crewmembers.* When operating at flight altitudes above 10,000 feet, the certificate holder shall supply enough oxygen to comply with § 121.329, but not less than a two-hour supply for each flight crewmember on flight deck duty. The oxygen required in the event of cabin pressurization failure by § 121.337 may be included in determining the supply required for flight crewmembers on flight deck duty.

(c) *Use of oxygen masks by flight crewmembers.* (1) When operating at flight altitudes above flight level 250, each flight crewmember on flight deck duty must be provided with an oxygen mask so designed that it can be rapidly placed on his face from its ready position, properly secured, sealed, and supplying oxygen upon demand; and so designed that after being placed on the face it does not prevent immediate communication between the flight crewmember and other crewmembers over the airplane intercommunication system. When it is not being used at flight altitudes above flight level 250, the oxygen mask must be kept in condition for ready use and located so as to be within the immediate reach of the flight crewmember while at his duty station.

(2) When operating at flight altitudes above flight level 250, one pilot at the controls of the airplane shall at all times wear and use an oxygen mask secured, sealed, and supplying oxygen, except that the one pilot need not wear and use an oxygen mask while at or below flight level 350 if each flight crewmember on flight deck duty has a quick-donning type of oxygen mask that the certificate holder has shown can be placed on the face from its ready position, properly secured, sealed, and supplying oxygen upon demand, with one hand and within five seconds. The certificate holder shall also show that the mask can be put on without disturbing eye glasses and without delaying the flight crewmember from proceeding with his assigned emergency duties. The oxygen mask after being put on must not prevent immediate communication between the flight crewmember and other crewmembers over the airplane intercommunication system.

(3) Notwithstanding subparagraph (2) of this paragraph, if for any reason at any time it is necessary for one pilot to leave his station at the controls of the airplane when operating at flight altitudes above flight level 250, the remaining pilot at the controls shall put on and use his oxygen mask until the other pilot has returned to his duty station.

(4) Before the takeoff of a flight, each flight crewmember shall personally preflight his oxygen equipment to insure that the oxygen mask is functioning, fitted properly, and connected to appropriate supply terminals, and that the oxygen supply and pressure are adequate for use.

(d) *Use of portable oxygen equipment by cabin attendants.* Each attendant shall, during flight above flight level 250 flight altitude, carry portable oxygen equipment with at least a 15-minute supply of oxygen unless it is shown that enough portable oxygen units with masks or spare outlets and masks are distributed throughout the cabin to insure immediate availability of oxygen to each cabin attendant, regardless of his location at the time of cabin depressurization.

(e) *Passenger cabin occupants.* When the airplane is operating at flight altitudes above 10,000 feet, the following supply of oxygen must be provided for the use of passenger cabin occupants:

(1) When an airplane certificated to operate at flight altitudes up to and including flight level 250, can at any point along the route to be flown, descend safely to a flight altitude of 14,000 feet or less within four minutes, oxygen must be available at the rate prescribed by this Part for a 30-minute period for at least 10 percent of the passenger cabin occupants.

(2) When an airplane is operated at flight altitudes up to and including flight level 250 and cannot descend safely to a flight altitude of 14,000 feet within four minutes, or when an airplane is operated at flight altitudes above flight level 250, oxygen must be available at the rate prescribed by this part for not less than 10 percent of the pasenger cabin occupants for the entire flight after cabin depressurization, at cabin pressure altitudes above 10,000 feet up to and including 14,000 feet and, as applicable, to allow compliance with § 121.329(c) (2) and (3), except that there must be not less than a 10-minute supply for the passenger cabin occupants.

(3) For first-aid treatment of occupants who for physiological reasons might require undiluted oxygen following descent from cabin pressure altitudes above flight level 250, a supply of oxygen in accordance with the requirements of § 25.1443(d) must be provided for two percent of the occupants for the entire flight after cabin depressurization at cabin pressure altitudes above 8,000 feet, but in no case to less than one person. An appropriate number of acceptable dispensing units, but in no case less than two, must be provided, with a means for the cabin attendants to use this supply.

(f) *Passenger briefing.* Before flight is conducted above flight level 250, a crewmember shall instruct the passengers on the necessity of using oxygen in the event of cabin depressurization and shall point out to them the location and demonstrate the use of the oxygen-dispensing equipment.

§ 121.335 Equipment standards.

(a) *Reciprocating engine powered airplanes.* The oxygen apparatus, the minimum rates of oxygen flow, and the supply of oxygen necessary to comply with § 121.327 must meet the standards established in § 4b.651 of the Civil Air Regulations as in effect on July 20, 1950, except that if the certificate holder shows full compliance with those standards to be impracticable, the Administrator may authorize any change in those standards that he finds will provide an equivalent level of safety.

(b) *Turbine engine powered airplanes.* The oxygen apparatus, the minimum rate of oxygen flow, and the supply of oxygen necessary to comply with §§ 121.329 and 121.333 must meet the standards established in § 4b.651 of the Civil Air Regulations as in effect on September 1, 1958, except that if the certificate holder shows full compliance with those standards to be impracticable, the Administrator may authorize any changes in those standards that he finds will provide an equivalent level of safety.

§ 121.337 Protective breathing equipment for the flight crew.

(a) *Pressurized cabin airplanes.* Each required flight crewmember on flight deck duty must have readily available at his station protective breathing equipment covering the eyes, nose, and mouth (or the nose and mouth if accessory equipment is provided to protect the eyes) to protect him from the effects of smoke or carbon dioxide or other harmful gases. There must be at least a 300-liter standard temperature and pressure dry supply of oxygen for each required flight crewmember on flight deck duty. (Standard temperature and pressure dry oxygen at 0° centigrade, 760 mm. Hg.)

(b) *Nonpressurized cabin airplanes: general.* The requirements of paragraph (a) of this section apply to nonpressurized cabin airplanes if the Administrator finds that it is possible to obtain a dangerous concentration of smoke or carbon dioxide or other harmful gases in the flight crew compartments in any attitude of flight that might occur when the airplane is flown in accordance with either normal or emergency procedures.

(c) *Nonpressurized cabin airplanes with built-in carbon dioxide fire extinguisher system in fuselage compartment.* Each certificate holder operating a nonpressurized cabin airplane that has a built-in carbon dioxide fire extinguisher system in a fuselage compartment shall provide protective breathing equipment for the flight crew, except where—

(1) Not more than five pounds of carbon dioxide would be discharged into any compartment in accordance with established fire control procedures; or

(2) The carbon dioxide concentration at each flight crew station has been determined in accordance with § 25.1197 and has been found to be less than three percent by volume (corrected to standard sea-level conditions).

§ 121.339 Equipment for extended overwater operations.

(a) Except where the Administrator, by amending the operations specifications of the certificate holder, requires the carriage of all or any specific items of the equipment listed below for any overwater operation, or upon application of the certificate holder, the Administrator allows deviation for a particular extended overwater operation, no person may operate an airplane in extended overwater operations without having on the airplane the following equipment:

(1) A life preserver equipped with an approved survivor locator light, for each occupant of the airplane.

(2) Enough liferafts (each equipped with an approved survivor locator light) of a rated capacity and buoyancy to accommodate the occupants of the airplane.

(3) Suitable pyrotechnic signaling devices.

(4) One self-buoyant, water-resistant, portable emergency radio signaling device, that is capable of transmission on the appropriate emergency frequency or frequencies, and not dependent upon the airplane power supply.

(b) The required life rafts, life preservers, and signaling devices must be easily accessible in the event of a ditching without appreciable time for preparatory procedures. This equipment must be installed in conspicuously marked approved locations.

(c) A survival kit, appropriately equipped for the route to be flown, must be attached to each required life raft.

§ 121.341 Equipment for operations in icing conditions.

(a) Unless an airplane is certificated under the transport category airworthiness requirements relating to ice protection, no person may operate an airplane in icing conditions unless it is equipped with means for the prevention or removal of ice on windshields, wings, empennage, propellers, and other parts of the airplane where ice formation will adversely affect the safety of the airplane.

(b) No person may operate an airplane in icing conditions at night unless means are provided for illuminating or otherwise determining the formation of ice on the parts of the wings that are critical from the standpoint of ice accumulation. Any illuminating that is used must be of a type that will not cause glare or reflection that would handicap crewmembers in the performance of their duties.

§ 121.343 Flight recorders.

(a) No person may operate any of the following airplanes unless it is equipped with an approved flight recorder that records at least time, altitude, air speed, vertical acceleration, and heading:

(1) A large airplane that is certificated for operations above 25,000 feet altitude;

(2) Any large turbine engine powered airplane.

(b) Whenever an approved flight recorder is installed, it must be operated continuously from the instant the airplane begins the takeoff roll until it has completed the landing roll at an airport.

(c) Each certificate holder shall keep the recorded information for at least 60 days and for a longer period upon the request of the Administrator or the Civil Aeronautics Board for a particular flight or series of flights.

§ 121.345 Radio equipment.

(a) No person may operate an airplane unless it is equipped with radio equipment required for the kind of operation being conducted.

(b) Where two independent (separate and complete) radio systems are required by §§ 121.347 and 121.349, each system must have an independent antenna installation except that, where rigidly supported nonwire antennas or other antenna installations of equivalent reliability are used, only one antenna is required.

§ 121.347 Radio equipment for operations under VFR over routes navigated by pilotage.

(a) No person may operate an airplane under VFR over routes that can be navigated by pilotage, unless it is equipped with the radio equipment necessary under normal operating conditions to fulfill the following:

(1) Communicate with at least one appropriate ground station from any point on the route.

(2) Communicate with appropriate traffic control facilities from any point in the control zone within which flights are intended.

(3) Receive meteorological information from any point en route by either of two independent systems. One of the means provided to comply with this subparagraph may be used to comply with subparagraphs (1) and (2) of this paragraph.

(b) No person may operate an airplane at night under VFR over routes than can be navigated by pilotage unless that airplane is equipped with the radio equipment necessary under normal operating conditions to fulfill the functions specified in paragraph (a) of this section and to receive radio navigational signals applicable to the route flown, except that a marker beacon receiver or ILS receiver is not required.

§ 121.349 Radio equipment for operations under VFR over routes not navigated by pilotage or for operations under IFR or over-the-top.

(a) No person may operate an airplane under VFR over routes that cannot be navigated by pilotage or for operations conducted under IFR or over-the-top, unless the airplane is equipped with that radio equipment necessary under normal operating conditions to fulfill the functions specified in § 121.347(a) and to receive satisfactorily by either of two independent systems, radio navigational signals from all primary en route and approach navigational facilities intended to be used. However, only one marker beacon receiver providing visual and aural signals and one ILS receiver need be provided. Equipment provided to receive signals en route may be used to receive signals on approach, if it is capable of receiving both signals.

(b) In the case of operation over routes on which navigation is based on

low frequency radio range or automatic direction finding, only one low frequency radio range or ADF receiver need be installed if the airplane is equipped with two VOR receivers, and VOR navigational aids are so located and the airplane is so fueled that, in the case of failure of the low frequency radio range receiver or ADF receiver, the flight may proceed safely to a suitable airport, by means of VOR aids, and complete an instrument approach by use of the remaining airplane radio system.

(c) Whenever VOR navigational receivers are required by paragraph (a) or (b) of this section, at least one approved distance measuring equipment unit (DME), capable of receiving and indicating distance information from VORTAC facilities, must be installed on each airplane when operated within the 48 contiguous States and the District of Columbia at and above 24,000 feet MSL and must be installed on each of the following airplanes, regardless of the altitude flown, when operating within the 48 contiguous States and the District of Columbia after the indicated dates.

(1) Turbojet airplanes—June 30, 1963.

(2) Turboprop airplanes—December 31, 1963.

(3) Pressurized reciprocating engine airplanes—June 30, 1964.

(4) Other large airplanes—June 30, 1965.

(d) If the distance measuring equipment (DME) becomes inoperative en route, the pilot shall notify ATC of that failure as soon as it occurs.

§ 121.351 Radio equipment for extended overwater operations and for certain other operations.

(a) No person may conduct an extended overwater operation unless the airplane is equipped with the radio equipment necessary to comply with § 121.349 and an independent system that complies with § 121.347(a)(1).

(b) No flag or supplemental air carrier or commercial operator may conduct an operation without the equipment specified in paragraph (a) of this section, if the Administrator finds that equipment to be necessary for search and rescue operations because of the nature of the terrain to be flown over.

§ 121.353 Equipment for operations over uninhabited terrain areas: flag and supplemental air carriers and commercial operators.

Unless it has the following equipment, no flag or supplemental air carrier or commercial operator may conduct an operation over an uninhabited area or any other area that (in its operations specifications) the Administrator specifies requires equipment for search and rescue in case of an emergency:

(a) Suitable pyrotechnic signaling devices.

(b) One self-buoyant, water-resistant, portable emergency radio signaling device capable of transmission on the appropriate emergency frequency or frequencies and not dependent upon the airplane power supply.

(c) Enough survival kits, appropriately equipped for the route to be flown, for the number of occupants of the airplane.

§ 121.355 Equipment for operations on which specialized means of navigation are required: flag and supplemental air carriers and commercial operators.

No flag or supplemental air carrier or commercial operator may conduct an operation for which specialized means of navigation are required unless it shows that adequate airborne equipment is provided for the specialized navigation authorized for the particular route to be operated.

§ 121.357 Airborne weather radar equipment requirements: passenger-carrying airplanes.

(a) No person may operate any airplane certificated under the transport category rules (except C–46 type airplanes), in passenger-carrying operations, unless approved airborne weather radar equipment has been installed in the airplane.

(b) Each person operating a transport category airplane with approved airborne weather radar installed shall, when using it in passenger operations under this Part, operate it in accordance with the following:

(1) *Dispatch.* No person may dispatch an airplane (or begin the flight of an airplane in the case of an air carrier or commercial operator that does not use a dispatch system) under IFR or night VFR conditions when current weather reports indicate that thunderstorms, or other potentially hazardous weather conditions that can be detected with airborne weather radar, may reasonably be expected along the route to be flown, unless the airborne weather radar equipment is in satisfactory operating condition.

(2) If the airborne weather radar becomes inoperative en route, the airplane must be operated in accordance with the approved instructions and procedures specified in the operations manual for such an event.

(c) This section does not apply to airplanes used solely within the State of Hawaii or within the State of Alaska and that part of Canada west of longitude 130 degrees W, between latitude 70 degrees N, and latitude 53 degrees N, or during any cargo only, training, test, or ferry flight.

(d) Notwithstanding any other provision of this chapter, an alternate electrical power supply is not required for airborne weather radar equipment.

§ 121.359 Cockpit voice recorders.

(a) No certificate holder may operate any of the following airplanes after the listed date unless an approved cockpit voice recorder is installed in that airplane and is operated continuously from the start of the use of the checklist (before starting engines for the purpose of flight), to completion of the final checklist at the termination of the flight:

(1) Large turbine engine powered airplanes—June 30, 1966.

(2) Large pressurized airplanes with four reciprocating engines—December 31, 1966.

(b) Each certificate holder shall establish a schedule for completion, before the prescribed dates, of the cockpit voice recorder installations required by paragraph (a) of this section. In addition the certificate holder shall identify any airplane specified in paragraph (a) of this section he intends to discontinue using before the prescribed dates.

(c) Each cockpit voice recorder must be installed in accordance with the requirements of Part 25 of this chapter.

(d) In complying with this section, an approved cockpit voice recorder having an erasure feature may be used, so that at any time during the operation of the recorder, information recorded more than 30 minutes earlier may be erased or otherwise obliterated.

(e) In the event of an accident or occurrence requiring immediate notification of the Civil Aeronautics Board under Part 320 of its regulations, the certificate holder shall keep the recorded information for at least 60 days or, if requested by the Administrator or the Board, for a longer period. Information obtained from the record is used to assist in determining the cause of accidents or occurrences in connection with investigations under Part 320. The Administrator does not use the record in any civil penalty or certificate action.

Subpart L—Maintenance, Preventive Maintenance, and Alterations

§ 121.361 Applicability.

This subpart prescribes requirements for maintenance, preventive maintenance, and alterations for all certificate holders.

§ 121.363 Responsibility for airworthiness.

(a) Each certificate holder is primarily responsible for—

(1) The airworthiness of its aircraft, including airframes, aircraft engines, propellers, appliances, and parts thereof; and

(2) The performance of the maintenance, preventive maintenance, and alteration of its aircraft, including airframes, aircraft engines, propellers, or appliances, and parts thereof, in accordance with its manual and the regulations of this chapter.

(b) A certificate holder may make arrangements with another person for the performance of any maintenance, preventive maintenance, or alterations. However, this does not relieve the certificate holder of the responsibility specified in paragraph (a) of this section.

§ 121.365 Maintenance, preventive maintenance, and alteration organization.

(a) Each certificate holder that performs any of its maintenance (other than required inspections), preventive maintenance, or alterations, and each person with whom it arranges for the performance of that work must have an organization adequate to perform the work.

(b) Each certificate holder that performs any inspections required by its manual (in this subpart referred to as "required inspections") and each person

with whom it arranges for the performance of that work must have an organization adequate to perform that work.

(c) Each person performing required inspections in addition to other maintenance, preventive maintenance, or alterations, shall organize the performance of those functions so as to separate the required inspection functions from the other maintenance, preventive maintenance, and alteration functions. The separation shall be below the level of administrative control at which overall responsibility for the required inspection functions and other maintenance, preventive maintenance, and alteration functions are exercised.

§ 121.367 Maintenance, preventive maintenance, and alterations programs.

Each certificate holder shall have an inspection program and a program covering other maintenance, preventive maintenance, and alterations that ensures that—

(a) Maintenance, preventive maintenance, and alterations performed by it, or by other persons, are performed in accordance with the certificate holder's manual;

(b) Competent personnel and adequate facilities and equipment are provided for the proper performance of maintenance, preventive maintenance, and alterations; and

(c) Each aircraft released to service is airworthy and has been properly maintained for operation in air transportation.

§ 121.369 Manual requirements.

(a) The certificate holder shall put in its manual a chart or description of the certificate holder's organization required by § 121.365 and a list of persons with whom it has arranged for the performance of any of its required inspections, other maintenance, preventive maintenance, or alterations, including a general description of that work.

(b) The certificate holder's manual must contain the programs required by §121.367 that must be followed in performing maintenance, preventive maintenance, and alterations of that certificate holder's airplanes, including airframes, aircraft engines, propellers, appliances, and parts thereof, and must include at least the following:

(1) The method of performing routine and nonroutine maintenance (other than required inspections), preventive maintenance, and alterations.

(2) A designation of the items of maintenance and alteration that must be inspected (required inspections), including at least those that could result in a failure, malfunction, or defect endangering the safe operation of the aircraft, if not performed properly or if improper parts or materials are used.

(3) The method of performing required inspections and a designation by occupational title of personnel authorized to perform each required inspection.

(4) Procedures for the reinspection of work performed pursuant to previous required inspection findings ("buy-back procedures").

(5) Procedures, standards, and limits necessary for required inspections and acceptance or rejection of the items required to be inspected and for periodic inspection and calibration of precision tools, measuring devices, and test equipment.

(6) Procedures to ensure that all required inspections are performed.

(7) Instructions to prevent any person who performs any item of work from performing any required inspection of that work.

(8) Instructions and procedures to prevent any decision of an inspector, regarding any required inspection from being countermanded by persons other than supervisory personnel of the inspection unit, or a person at that level of administrative control that has overall responsibility for the management of both the required inspection functions and the other maintenance, preventive maintenance, and alterations functions.

(9) Procedures to ensure that required inspections, other maintenance, preventive maintenance, and alterations that are not completed as a result of shift changes or similar work interruptions are properly completed before the aircraft is released to service.

§ 121.371 Required inspection personnel.

(a) No person may use any person to perform required inspections unless the person performing the inspection is appropriately certified, properly trained, qualified, and authorized to do so.

(b) No person may allow any person to perform a required inspection unless, at that time, the person performing that inspection is under the supervision and control of an inspection unit.

(c) No person may perform a required inspection if he performed the item of work required to be inspected.

(d) Each certificate holder shall maintain, or shall determine that each person with whom it arranges to perform its required inspections maintains, a current listing of persons who have been trained, qualified, and authorized to conduct required inspections. The persons must be identified by name, occupational title, and the inspections that they are authorized to perform. The certificate holder (or person with whom it arranges to perform its required inspections) shall give written information to each person so authorized describing the extent of his responsibilities, authorities, and inspectional limitations. The list shall be made available for inspection by the Administrator upon request.

§ 121.373 Continuing analysis and surveillance.

(a) Each certificate holder shall establish and maintain a system for the continuing analysis and surveillance of the performance and effectiveness of its inspection program and the program covering other maintenance, preventive maintenance, and alterations and for the correction of any deficiency in those programs, regardless of whether those programs are carried out by the certificate holder or by another person.

(b) Whenever the Administrator finds that either or both of the programs described in paragraph (a) of this paragraph does not contain adequate procedures and standards to meet the requirements of this Part, the certificate holder shall, after notification by the Administrator, make any changes in those programs that are necessary to meet those requirements.

(c) A certificate holder may petition the Administrator to reconsider the notice to make a change in a program. The petition must be filed with the FAA Air Carrier District Office charged with the overall inspection of the certificate holder's operations within 30 days after the certificate holder receives the notice. Except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the Administrator.

§ 121.375 Maintenance and preventive maintenance training program.

Each certificate holder or person performing maintenance or preventive maintenance functions for it shall have a training program to ensure that each person (including inspection personnel) who determines the adequacy of work done is fully informed about procedures and techniques and new equipment in use and is competent to perform his duties.

§ 121.377 Maintenance and preventive maintenance personnel duty time limitations.

Within the United States, each certificate holder (or person performing maintenance or preventive maintenance functions for it) shall relieve each person performing maintenance or preventive maintenance from duty for a period of at least 24 consecutive hours during any seven consecutive days, or the equivalent thereof within any one calendar month.

§ 121.378 Certificate requirements.

(a) Each person who is directly in charge of maintenance, preventive maintenance, or alteration, and each person performing required inspections must hold an appropriate airman certificate.

(b) For the purposes of this section, a person "directly in charge" is each person assigned to a position in which he is responsible for the work of a shop or station that performs maintenance, preventive maintenance, alterations, or other functions affecting aircraft airworthiness. A person who is "directly in charge" need not physically observe and direct each worker constantly but must be available for consultation and decision on matters requiring instruction or decision from higher authority than that of the persons performing the work.

§ 121.379 Authority to perform and approve maintenance, preventive maintenance and alterations.

(a) A certificate holder may perform maintenance, preventive maintenance, and alterations as provided in its continuous airworthiness maintenance program and its maintenance manual. In addition, an air carrier may perform these functions for another air carrier

as provided in the continuous airworthiness maintenance program and maintenance manual of the other air carrier.

(b) A certificate holder may approve any aircraft, airframe, aircraft engine, propeller, or appliance for return to service after maintenance, preventive maintenance, or alterations that it performed under paragraph (a) of this section. However, in the case of a major repair or major alteration, the work must have been done in accordance with technical data approved by the Administrator.

Subpart M—Airman and Crewmember Requirements

§ 121.381 Applicability.

This subpart prescribes airman and crewmember requirements for all certificate holders.

§ 121.383 Airman: limitations on use of services.

(a) No certificate holder may use a person as an airman unless that person—

(1) Holds an appropriate current airman certificate issued by the FAA;

(2) Has any required appropriate current airman and medical certificates in his possession while engaged in operations under this part; and

(3) Is otherwise qualified for the operation for which he is to be used.

(b) Each airman covered by paragraph (a)(2) of this section shall present either or both certificates for inspection upon the request of the Administrator.

(c) No certificate holder may use the services of any person as a pilot on an airplane engaged in operations under this part if that person has reached his 60th birthday. No person may serve as a pilot on an airplane engaged in operations under this part if that person has reached his 60th birthday.

§ 121.385 Composition of flight crew.

(a) No certificate holder may operate an aircraft with less than the minimum flight crew in the airworthiness certificate or the aircraft Flight Manual approved for that type aircraft and required by this part for the kind of operation being conducted.

(b) In any case in which this part requires the performance of two or more functions for which an airman certificate is necessary, that requirement is not satisfied by the performance of multiple functions at the same time by one airman.

(c) The following minimum pilot crews apply:

(1) *Domestic air carriers.* If a domestic air carrier is authorized to operate under IFR, or if it operates large aircraft, the minimum pilot crew is two pilots and the air carrier shall designate one pilot as pilot in command and the other second in command.

(2) *Flag air carriers.* If a flag air carrier is authorized to operate under IFR, or if it operates large aircraft, the minimum pilot crew is two pilots.

(3) *Supplemental air carriers and commercial operators.* If a supplemental air carrier or commercial operator is authorized to operate helicopters under IFR, or if it operates large aircraft, the minimum pilot crew is two pilots and the supplemental air carrier or commercial operator shall designate one pilot as pilot in command and the other second in command.

(d) On each flight requiring a flight engineer at least one flight crewmember, other than the flight engineer, must be qualified to provide emergency performance of the flight engineer's functions for the safe completion of the flight if the flight engineer becomes ill or is otherwise incapacitated. A pilot need not hold a flight engineer's certificate to perform the flight engineer's functions in such a situation.

§ 121.387 Flight engineer.

(a) No certificate holder may operate an airplane having a maximum certificated takeoff weight of more than 80,000 pounds without a flight crewmember holding a current flight engineer certificate.

(b) Such a flight crewmember is also required on each four-engine airplane having a maximum certificated takeoff weight of more than 30,000 pounds, if the Administrator determines that the design of the airplane or the kind of operation requires a flight engineer for safe operation.

§ 121.389 Flight navigator: flag and supplemental air carriers and commercial operators.

(a) No flag or supplemental air carrier or commercial operator may operate an airplane over any area, route, or route segment that is outside the 48 contiguous States and the District of Columbia, without a flight crewmember holding a current flight navigator certificate, whenever the Administrator determines that celestial navigation is necessary or other specialized means of navigation necessary to obtain a reliable fix for the safety of the flight cannot be adequately accomplished from the pilot station for a period of more than one hour. However, the Administrator may also require a certificated flight navigator when those specialized means of navigation are necessary for one hour or less. In making that determination the Administrator considers—

(1) The speed of the airplane;

(2) Normal weather conditions en route;

(3) Extent of air traffic control;

(4) Traffic congestion;

(5) Area of land at destination;

(6) Fuel requirements;

(7) Fuel available for return to point of departure or alternates; and

(8) Predication of flight upon operation beyond the point-of-no-return.

(b) The areas, routes, or route segments over which a navigator is required are specified in the operations specifications of the air carrier or commercial operator.

§ 121.391 Flight attendants: domestic air carriers.

Each domestic air carrier conducting a passenger operation shall provide at least one flight attendant on each airplane with a capacity of more than nine passengers.

§ 121.393 Flight attendants: flag and supplemental air carriers and commercial operators.

(a) Except as provided in paragraph (b) of this section, each flag and supplemental air carrier and each commercial operator conducting a passenger operation shall provide at least the following flight attendants on each airplane used:

(1) For airplanes having a seating capacity of at least 10 but less than 45 passengers—one flight attendant.

(2) For airplanes having a seating capacity of at least 45 but less than 101 passengers—two flight attendants.

(3) For airplanes having a seating capacity of more than 100 passengers—three flight attendants.

(b) Upon application by the air carrier or commercial operator, the Administrator may approve the use of an airplane in a particular operation with less than the number of flight attendants required by paragraph (a) of this section, if the air carrier or commercial operator shows that, based on the following, safety and emergency procedures and functions established under § *121.397* for the particular type of airplane and operation can be adequately performed by fewer flight attendants:

(1) Kind of operation.

(2) The number of passenger seats.

(3) The number of compartments.

(4) The number of emergency exits.

(5) Emergency equipment.

(6) The presence of other trained flight crewmembers, not on flight deck duty, whose services may be used in emergencies.

§ 121.395 Aircraft dispatcher: domestic and flag air carriers.

Each domestic and flag air carrier shall provide enough qualified aircraft dispatchers at each dispatch center to ensure proper operational control of each flight.

§ 121.396 Emergency and emergency evacuation duties: domestic air carriers.

(a) Each domestic air carrier shall assign to each required crewmember the necessary functions that he is to perform in an emergency or a situation requiring emergency evacuation. The air carrier shall show that those functions are realistic and can be practically accomplished.

(b) The air carrier shall describe each required crewmember's functions under paragraph (a) of this section in its air carrier manual.

§ 121.397 Emergency and emergency evacuation duties: flag and supplemental air carriers and commercial operators.

(a) Each flag and supplemental air carrier and each commercial operator of airplanes shall assign to each required crewmember the necessary functions that he is to perform in an emergency or a situation requiring emergency evacuation. The air carrier or commercial operator shall assign those functions for each type of airplane that it uses and shall show that those functions are realistic and can be accomplished.

(b) The air carrier or commercial operator shall describe each required crew-

member's functions under paragraph (a) of this section in its manual.

(c) The air carrier or commercial operator shall train each required crewmember in his functions under paragraph (a) of this section during the emergency training part of the approved training program prescribed in § 121.411.

Subpart N—Training Program

§ 121.410 Applicability.

Except where otherwise stated, this subpart prescribes requirements applicable to each certificate holder for establishing and maintaining a training program.

§ 121.411 Establishment.

(a) Each certificate holder shall have an approved training program that assures that each crewmember and each aircraft dispatcher (where required) is adequately trained to perform his assigned duties. Each crewmember and each aircraft dispatcher (where required) must satisfactorily complete the initial training phases before serving in operations under this part.

(b) Each certificate holder shall provide adequate ground and flight training facilities and properly qualified instructors for the training required by this section, and enough check airmen to conduct the flight checks required by this part. Each check airman must hold the airman certificates and ratings that are required for the airman being checked.

(c) The training program for each flight crewmember must consist of appropriate ground and flight training, including proper flight crew coordination and training in emergency procedures. The certificate holder shall standardize procedures for each flight crew function to the extent that each flight crewmember knows the functions for which he is responsible and the relation of those functions to the functions of other flight crewmembers. The initial program must include at least the requirements set forth in §§ 121.413 through 121.423.

(d) The crewmember emergency procedures training program must include at least the requirements set forth in § 121.423.

(e) Each instructor, supervisor, or check airman that is responsible for a particular training or flight check shall certify as to the proficiency of the crewmember or dispatcher concerned after he completes his initial training and after he completes his recurrent training. That certification shall be made a part of the crewmember's or dispatcher's record.

§ 121.413 Ground training: pilots.

(a) The initial ground training that the certificate holder must provide for each pilot before he serves as a flight crewmember must include at least—

(1) Instruction in the appropriate provisions of the certificate holder's operations specifications and of this chapter, especially the operating and dispatcher flight release rules and airplane operating limitations;

(2) Dispatch procedures (domestic and flag air carriers) or flight release procedures (supplemental air carriers and commercial operators) and appropriate contents of the manuals;

(3) Duties and responsibilities of crewmembers;

(4) The type of aircraft to be flown, including a study of the aircraft, engines, major components and systems, performance limitations, standard and emergency operating procedure, and appropriate contents of the approved Aircraft Flight Manual;

(5) Principles and methods for determining weight and balance limitations for takeoff and landing;

(6) Navigation and the use of appropriate navigation aids, including instrument approach facilities and procedures that the certificate holder is authorized to use;

(7) Air traffic control systems and procedures, and pertinent ground control letdown procedures;

(8) Enough meteorology to ensure a practical knowledge of the principles of icing, fog, thunderstorms, and frontal systems; and

(9) Procedures for operating in turbulent air, icing, hail, thunderstorm, and other potentially hazardous meteorological conditions.

(b) In addition to the training required by paragraph (a) of this section, each flag and supplemental air carrier and each commercial operator shall provide training in communications procedures and communications equipment failure procedures.

(c) Each certificate holder shall provide the following for each pilot:

(1) Any additional ground training necessary to ensure qualifications in new equipment, procedures, or techniques.

(2) Checks (and, in the case of flag air carriers, supplemental air carriers, and commercial operators, recurrent ground training) at least once each twelve months to ensure his continued proficiency in procedures, techniques, and information essential to the satisfactory performance of his duties. A check may be given during the month before or after it is due without affecting its effective date.

§ 121.415 Flight training: pilots.

(a) The initial flight training that the certificate holder must provide for each pilot before he serves as a flight crewmember must include at least—

(1) Takeoffs and landings during day and night in each type of airplane he is to pilot in operations under this Part;

(2) Normal and emergency flight maneuvers in each type of airplane he is to pilot in operations under this Part; and

(3) Flight under simulated instrument conditions.

(b) A pilot qualifying to serve as other than pilot in command or second in command, shall show the Administrator or a check pilot that he is able to take off and land each type of airplane in which he is to serve.

(c) The initial flight training for each pilot qualifying to serve as a pilot in command (and, in the case of a flag or supplemental air carrier or commercial operator, the second in command of an airplane in an operation that requires three or more pilots) must include flight instruction and practice in at least the following maneuvers and procedures:

(1) In each type of airplane to be flown by him in operations under this part, he must perform the following:

(i) In the case of takeoffs at the authorized maximum takeoff weight using maximum takeoff power with a simulated failure of the critical engine. In transport category airplanes the simulated failure must be done as close as possible to the critical engine failure speed V_1 and climb-out must be made as close as possible to the takeoff safety speed V_2, and the pilot shall determine the values for V_1 and V_2.

(ii) If a three-engine or four-engine airplane, flight, including maneuvering to a landing at the authorized maximum landing weight, with the most critical combination of two engines inoperative, or operating at zero thrust, using where appropriate applicable climb speeds set forth in the Airplane Flight Manuals.

(iii) At the authorized maximum landing weight, simulated pull-out from the landing and approach configurations at a safe altitude with the critical engine inoperative or operating at zero thrust.

(2) Flight must be conducted under simulated IFR conditions using each kind of navigation facility and letdown procedure that is used in normal operations. If a particular kind of facility is not available in the training area, the training may be given in a synthetic trainer.

For the purposes of subparagraph (1) of this paragraph, weight and power combinations less than those specified in subdivisions (i), (ii), and (iii) of that subparagraph may be used if the performance capabilities of the airplane under the specified conditions are simulated.

(d) Initial flight training for each pilot qualifying to serve as second in command of an airplane in domestic operations (or second in command of an airplane that requires two pilots in flag or supplemental air carrier or commercial operator operations) must include flight instruction and practice in at least the following maneuvers and procedures:

(1) In each type of airplane to be flown by him in operations under this part, flight training must include—

(i) Assigned flight duties as second in command, including flight emergencies;

(ii) Taxiing;

(iii) Takeoffs and landings;

(iv) Climbs and climbing turns;

(v) Slow flight;

(vi) Approach to stall;

(vii) Engine shutdown and restart;

(viii) Takeoff and landing with simulated engine failure; and

(ix) Flight under simulated IFR conditions, including instrument approach at least down to circling approach minimums and missed approach procedures.

(2) Flight must be conducted under simulated IFR conditions using each kind of navigation facility and letdown procedure that is used in normal operations. Except for those approach procedures for which the lowest minimums are approved, letdown procedures may be given in a synthetic trainer that has the radio

equipment and instruments necessary to simulate other navigational and letdown procedures approved for the certificate holder.

(e) The certificate holder shall give each pilot any additional flight training necessary to insure his qualification for new equipment, procedures, or techniques. At least once each 12 months, as a part of the training program, it shall give him a check (and in the case of a flag or supplemental air carrier or commercial operator, recurrent flight training). A check may be given during the month before or after it is due without affecting its effective date. The purpose of these checks and training is to insure his continued proficiency with respect to procedures, techniques, and information essential to the satisfactory performance of his duties. If the check of a pilot in command or second in command requires actual flight, satisfactory completion of the applicable proficiency checks required by § 121.441 or 121.449 meets the requirements of this section.

§ 121.417 Flight navigator training: flag air carriers.

(a) The training for each flight navigator must include at least the applicable parts of subparagraphs (1) through (4) and (6) through (8) of § 121.413(a).

(b) Before serving as a flight crewmember, each flight navigator must have enough ground and flight training to be proficient in the duties assigned to him by the air carrier. The flight training may be given during scheduled flight in air transportation under the supervision of a qualified flight navigator.

(c) The flag air carrier shall give each flight navigator any additional ground and flight training necessary to ensure his qualification for new equipment, procedures, and techniques. At least once each 12 months, as a part of the training program, it shall give him recurrent ground training and a flight check to ensure his continued proficiency with respect to procedures, techniques, and information essential to the satisfactory performance of his duties. The flight check may be given during scheduled flight in air transportation, or in a synthetic trainer in place of a check in flight.

§ 121.419 Flight navigator training: supplemental air carriers and commercial operators.

(a) The training for each flight navigator must include at least the applicable parts of subparagraphs (1) through (4) and (6) through (8) of § 121.413(a).

(b) Before serving as a flight crewmember, each flight navigator must have enough ground and flight training to be proficient in the duties assigned to him by the air carrier or commercial operator. The flight training may be given during flights subject to this part under the supervision of a qualified flight navigator.

(c) The supplemental air carrier or commercial operator shall give each flight navigator any additional ground and flight training necessary to ensure his qualification for new equipment, procedures, and techniques. At least once within the preceding 12 months, as a part of the training program, it shall give him recurrent ground training and a flight check to ensure his continued proficiency with respect to procedures, techniques, and information essential to the satisfactory performance of his duties. The flight check may be given during passenger or cargo flights under the supervision of a qualified navigator, or in a synthetic trainer in place of a check in flight. A competence check may be given during the month before or the month after it is due without affecting its effective date.

§ 121.421 Flight engineer training.

(a) The training for each flight engineer must include at least the applicable parts of subparagraphs (1) through (5) of § 121.413(a).

(b) Before serving as a flight crewmember, each flight engineer must have enough flight training to be proficient in the duties assigned to him by the certificate holder. Except for emergency procedures, the flight training may be given during flights subject to the provisions of this part applicable to the certificate holder under the supervision of a qualified flight engineer.

(c) The certificate holder shall give each flight engineer any additional ground and flight training necessary to assure his qualification for new equipment, procedures, and techniques. At least once each 12 months, as a part of the training program, it shall give him a check (and in the case of a flag or supplemental air carrier or commercial operator, recurrent training) to assure his continued proficiency with respect to procedures, techniques, and information essential to the satisfactory performance of his duties. A competence check may be given during the month before or the month after it is due without affecting its effective date.

§ 121.423 Crewmember emergency training.

(a) Each certificate holder shall design its initial training in emergency procedures to give each required crewmember appropriate instruction in emergency procedures, including assignments in an emergency and coordination among crewmembers and appropriate individual instruction in at least the following subjects, as appropriate to the particular crewmember:

(1) Procedures for handling failure of an engine, engines, or other airplane components or systems.

(2) Procedures for handling—

(i) Emergency decompression;

(ii) Fire in the air or on the ground;

(iii) Ditching; and

(iv) Evacuation.

(3) The location of emergency equipment.

(4) The operation of emergency equipment.

(5) The power setting for maximum endurance and maximum range.

(b) The certificate holder shall give each crewmember, at least once each 12 months, a check (and, in the case of a flag or supplemental air carrier or a commercial operator, recurrent training) in the emergency procedures set forth in paragraph (a) of this section).

(c) Synthetic trainers approved to simulate flight operating emergency conditions may be used for training crewmembers in emergency procedures.

(d) The certificate holder shall give instruction, by lectures and films (or other equivalent means approved after demonstration) to each crewmember performing duties on pressurized airplanes operated above 25,000 feet covering at least—

(1) Respiration;

(2) Hypoxia;

(3) Duration of consciousness at altitudes without supplemental oxygen;

(4) Gas expansion;

(5) Gas bubble formation; and

(6) Physical phenomena and incidents of decompression.

(e) The certificate holder shall give each crewmember performing duties on pressurized airplanes operated above 25,000 feet, training and practice in putting on oxygen masks and operating oxygen equipment.

§ 121.425 Aircraft dispatcher training: domestic and flag air carriers.

(a) Each domestic and flag air carrier shall provide a training program for its aircraft dispatchers that includes—

(1) Training in their duties and responsibilities;

(2) Flight operations procedures;

(3) Air traffic control procedures;

(4) Performance of airplanes used;

(5) Navigation aids and facilities; and

(6) Meteorology.

(b) The training program must emphasize emergency procedures, including the alerting of proper governmental, company, and private agencies to give the maximum help to an airplane in distress.

(c) Each aircraft dispatcher shall, before performing duties as an aircraft dispatcher, show the supervisor or ground instructor authorized to certify his proficiency, his knowledge of the following:

(1) Contents of the air carrier operating certificate.

(2) Appropriate provisions of the air carrier's operations specifications, manual, and this chapter.

(3) Characteristics of airplanes used by the carrier.

(4) Cruise control data and cruising speeds for those airplanes.

(5) Maximum authorized airplane loads for the routes and airports used.

(6) Air carrier radio facilities.

(7) Characteristics and limitations of each kind of radio and navigation facility used.

(8) Effect of weather conditions on airplane radio reception.

(9) Airports used and the terrain en route.

(10) Prevailing weather phenomena.

(11) Sources of weather information available.

(12) Pertinent air traffic control procedures.

(13) Emergency procedures.

(d) The air carrier shall give each dispatcher any additional training necessary to assure his qualification for new equipment, procedures, and techniques. At least once each 12 months, as a part

of the training program, it shall give him a check (and, in the case of a flag or supplemental air carrier or a commercial operator, recurrent training) to assure his continued competence with respect to the procedures, techniques, and information essential to his duties.

Subpart O—Flight Crewmember Qualifications

§ 121.431 Applicability.

This subpart prescribes flight crewmember qualifications for all certificate holders except where otherwise specified.

§ 121.433 General.

(a) No certificate holder may use a flight crewmember, and none of its flight crewmembers may perform duties under his airman certificate, unless he meets the appropriate requirements of §§ 121.411 through 121.423 and §§ 121.439 through 121.453.

(b) When a pilot completes a check required by this subpart, the check airman who is responsible for the particular check shall certify as to the pilot's proficiency. This certification shall be made a part of the pilot's record.

(c) If a flight crewmember who is required to take a check takes that check in the calendar month before, or the calendar month after, the month in which it becomes due, he is considered to have taken it during the month it became due.

§ 121.435 Helicopter operations: Supplemental air carriers and commercial operators.

No supplemental air carrier or commercial operator may use a flight crewmember, and none of its flight crewmembers may perform duties under his airman certificate in helicopter operations, unless that flight crewmember meets the requirements of §§ 127.151 or 127.161 and 127.175 and 127.177.

§ 121.437 Pilot qualification: certificates required.

(a) No pilot may act as pilot in command of an aircraft (or as second in command of an aircraft in a flag or supplemental air carrier or commercial operator operation that requires three or more pilots) unless he holds an airline transport pilot certificate and an appropriate type rating for that aircraft.

(b) Each pilot who acts as a pilot in a capacity other than those specified in paragraph (a) of this section must hold at least a commercial pilot certificate and an instrument rating.

§ 121.439 Pilot qualification: recent experience.

No certificate holder may use a pilot as a pilot in command or second in command in operations under this part unless, within the preceding 90 days, he has made at least three takeoffs and three landings in an airplane of the type in which he is to serve.

§ 121.441 Pilot checks.

(a) *Line check.* No certificate holder may use a pilot as pilot in command of an airplane until he has passed a line check in one of the types of airplanes that he is to fly as follows:

(1) For domestic and flag air carriers the check must—

(i) Be given by an approved check pilot who is qualified on both the route and the airplane; and

(ii) Consist of at least a scheduled flight over a typical part of the air carrier's route to which the pilot is normally assigned.

(2) For supplemental air carriers and commercial operators the check must—

(i) Be given by an approved check pilot who is qualified on the airplane; and

(ii) Consist of at least one flight over a part of a Federal airway, foreign airway, or advisory route over which the pilot may be assigned.

Thereafter, a pilot may not serve as pilot in command unless each 12 months he passes a similar line check. During the flight (that must be long enough for a determination to be made) the check pilot shall determine whether the pilot being checked satisfactorily performs the duties and responsibilities of a pilot in command.

(b) *Proficiency check.* No certificate holder may use a pilot as a pilot in command of an airplane in operations under this part unless he has satisfactorily shown to the Administrator or a check pilot that he is able to pilot and navigate airplanes that he is to fly. Thereafter he may not serve as a pilot in command unless each six months he passes a similar pilot proficiency check. If a pilot serves in more than one airplane type, at least each alternate check must be given in flight in the largest type of airplane in which he serves. The proficiency check must include the following:

(1) Equipment test (oral or written).
(2) Taxiing.
(3) Runup.
(4) Takeoff.
(5) Climb.
(6) Climbing turns.
(7) Steep turns.
(8) Maneuvers at minimum speeds.
(9) Approaches to stalls.
(10) Propeller feathering.
(11) Maneuvers with one or more engine(s) inoperative.
(12) Rapid descent and pullout.
(13) Radio tuning.
(14) Orientation.
(15) Approach procedures.
(16) Missed approach procedures.
(17) Traffic control procedures.
(18) Crosswind landings.
(19) Landing under circling approach conditions.
(20) Takeoffs and landings with engine(s) failure.
(21) Demonstration of pilot judgment.
(22) Emergency procedures.
(23) Flight maneuvers specified in § 121.415(c)(1), except that the simulated engine failure during takeoff need not be at speed V_1 or at the actual or simulated maximum authorized weight.
(24) Approved flight maneuvers under simulated instrument conditions using the navigational facilities and letdown procedures normally used by the pilot except that maneuvers other than those associated with approach procedures for which the lowest minimums are approved may be given in a synthetic trainer. However, where a certificate holder is authorized landing minimums based on instrument landing systems and ground control approach, only maneuvers associated with the predominant landing aid on a system-wide basis need be given in flight. A synthetic trainer used under this subparagraph must contain the radio equipment and instruments necessary to simulate the appropriate navigational and letdown procedures.

An equipment test given to an airman in the certificate holders ground school within the preceding six months may be accepted as equal to the test required by subparagraph (1) of this paragraph, in the discretion of the check pilot.

(c) If, in the judgment of the check pilot, the pilot being checked performs any of the items listed in paragraph (b) of this section in an unsatisfactory manner, the check pilot may give additional training to the pilot during the course of the proficiency check. If the pilot being checked is unable to demonstrate satisfactory performance to the check pilot, the certificate holder may not use him in operations under this part until he has satisfactorily shown his proficiency.

(d) *Use of flight simulator.* After the first proficiency check, the satisfactory completion of an approved training course in an approved airplane simulator may be substituted at alternate six-month intervals for the proficiency check required by paragraph (b) of this section, if the simulator meets the requirements of Appendix B of this part and—

(1) The simulator is maintained at the same level as required for initial approval;

(2) A functional preflight check of the simulator is performed each day before beginning simulator flight training or proficiency checks;

(3) A daily discrepancy log is kept and an entry of each discrepancy is made by the simulator instructor or check airman before the end of each training or check flight; and

(4) If a modification is made to the airplane, a corresponding modification is made to the simulator if necessary for flight crew training or proficiency checks.

The simulator may be used with inoperative instruments or equipment, if they are not applicable to the particular phase of training being given.

(e) Before serving as a pilot in command on any airplane, the pilot must have passed, during the preceding 12 months, either a proficiency check or a line check in that type of airplane.

§ 121.443 Pilot in command qualification: routes and airports: domestic and flag air carriers.

(a) No domestic or flag air carrier may use a pilot as pilot in command until he has qualified, for the route on which he is to serve, in accordance with this section, and the appropriate instructor or check pilot has so certified.

(b) The qualifying pilot shall show that he has adequate knowledge of the following with respect to each route he is to fly:

(1) Weather characteristics.
(2) Navigation facilities.

(3) Communication procedures.
(4) Kinds of terrain and obstruction hazards.
(5) Minimum safe flight levels.
(6) Position reporting points.
(7) Holding procedures.
(8) Pertinent air traffic control procedures.
(9) Congested areas, obstructions, physical layout, and instrument approach procedures for each regular, provisional, or refueling airport that is approved for the route.

Those parts of the requirements of this paragraph relating to holding procedures and instrument approach procedures may be accomplished in a synthetic trainer that contains the radio equipment and instruments necessary to simulate the navigation and letdown procedures approved for the air carrier.

(c) The qualifying pilot shall make an entry as a member of a flight crew at each regular, provisional, and refueling airport into which he is scheduled to fly. The entry must include a landing and a takeoff. The qualifying pilot must occupy a seat in the pilot compartment and must be accompanied by a pilot who is qualified for the airport.

(d) Paragraph (c) of this section does not apply if—

(1) The initial entry is made under VFR weather conditions at the airport involved;

(2) The air carrier shows that the qualification can be made by using approved pictorial means; or

(3) The air carrier notifies the Administrator that it intends to operate at an airport that is near an airport into which the pilot concerned is currently qualified by entry, and the Administrator finds that the pilot is adequately qualified at the new airport, considering at least the pilot's familiarity with the layout, surrounding terrain, location of obstacles, and instrument approach and traffic control procedures at the new airport.

(e) No pilot in command may serve on a route or route segment on which he must navigate by pilotage and fly at or below the level of terrain that is within 25 miles horizontally of the centerline of that route or route segment unless he has made at least two one-way trips over the route or route segment on the flight deck under VFR weather conditions.

§ 121.445 Pilot in command qualification: routes and airports: supplemental air carriers and commercial operators.

(a) Each supplemental air carrier and commercial operator shall establish in its manual a procedure whereby each pilot who has not flown over a route and into an airport within the preceding 60 days will certify on a form provided by the operator that he has studied and knows the subjects listed in paragraph (b) of this section in regard to the routes and airports into which he is to operate.

(b) Each qualifying pilot shall show that he has adequate knowledge of the following:

(1) Weather characteristics appropriate to the seasons.
(2) Navigation facilities.
(3) Communication procedures.
(4) Kinds of terrain and obstruction hazards.
(5) Minimum safe flight levels.
(6) Pertinent air traffic control procedures including terminal area, arrival, departure, and holding and all kinds of instrument approach procedures.
(7) Congested areas, obstruction, and physical layout of each airport in the terminal area in which the pilot will operate.

§ 121.447 Pilot route and airport qualifications for particular trips: Domestic and flag air carriers.

(a) A domestic or flag air carrier may not use a pilot as pilot in command unless, within the preceding 12 months, the pilot has made at least one trip as pilot or other member of a flight crew between terminals into which he is scheduled to fly and has complied with § 121.443(e), if applicable.

(b) To re-establish route and airport qualification after being absent from the route for a period of more than 12 months, a pilot must comply with the appropriate provisions of § 121.443.

§ 121.449 Proficiency checks: second in command.

(a) A certificate holder may not use a pilot as second in command unless he has satisfactorily shown to the Administrator or a check pilot that he is able to pilot and navigate airplanes that he is to fly and to perform his assigned duties. Thereafter, he may not serve as second in command unless each 12 months he satisfactorily completes a similar pilot proficiency check.

(b) If a pilot serves in more than one airplane type, at least each alternate check must be given in flight in the largest type of airplane in which he serves.

(c) The proficiency check must include at least an oral or written equipment test and the procedures and flight maneuvers specified in § 121.415(d)(1) (for domestic air carriers), or in § 121.415(d) (for other certificate holders). The check may be given from either the right or left pilot seat.

(d) After the initial check, satisfactory completion of an approved course of training in an aircraft simulator that meets the requirements of § 121.441(d) may be substituted at alternate 12-month intervals for the checks required by paragraphs (a) and (e) of this section. In addition, satisfactory completion of the proficiency check in accordance with § 121.441 (b), (c), and (d) meets the requirements of this section.

(e) For flag and supplemental air carriers and commercial operators, the proficiency check for the second in command of a required three-pilot crew is that set forth in § 121.441 (b), (c), and (d).

§ 121.451 Flight navigator qualification: flag and supplemental air carriers and commercial operators.

(a) No flag or supplemental air carrier or commercial operator may use a flight navigator unless, within the preceding 12-month period, he has had at least 50 hours of flight time as a flight navigator, or the air carrier or commercial operator or the Administrator has checked him (including a check in flight or in an approved synthetic trainer) and has determined that he is familiar with essential current navigation information pertaining to routes to be flown by him and that he is competent in the operating procedures and navigation equipment to be used.

(b) A flag or supplemental air carrier or commercial operator may check a flight navigator during a flight subject to this part, but it may not assign him as a required flight crewmember on that flight.

§ 121.453 Flight engineer qualification.

(a) No certificate holder may use a flight engineer unless, within the preceding six-month period, he has had at least 50 hours of flight time as a flight engineer on the type of airplane in which he is to serve, or the certificate holder or the Administrator has checked him (in a flight other than a flight under this Part) and has determined that he is familiar with all essential current information and operating procedures for the type of airplane to which he is assigned and is competent in that airplane.

(b) If a flight engineer has been previously qualified in the type of airplane in which he is to serve, the certificate holder may give the check in a synthetic trainer approved to simulate the necessary operating conditions in place of the flight check.

Subpart P—Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag Air Carriers

§ 121.461 Applicability.

This subpart prescribes the qualifications and duty time limitations for aircraft dispatchers for domestic and flag air carriers.

§ 121.463 Aircraft dispatcher qualifications.

(a) No domestic or flag air carrier may use an aircraft dispatcher unless he meets the requirements in §§ 121.411 and 121.425.

(b) No domestic or flag air carrier may use a dispatcher to dispatch airplanes over any route or route segment unless the air carrier has determined that he is familiar with all essential operating procedures for the entire route and the airplanes to be used. However, a dispatcher who is qualified to dispatch airplanes over part of a route may dispatch airplanes after coordinating with dispatchers who are qualified to dispatch airplanes over the other parts of the route.

(c) No aircraft dispatcher may dispatch airplanes over any area in which he is authorized to exercise dispatch jurisdiction unless, within the preceding 12 months, he has made at least a one-way qualification trip over that area on the flight deck of an airplane. The trip must include entry into as many points as practicable; it is not necessary to make a flight over each route in the area.

§ 121.465 Duty time limitations: Domestic and flag air carriers.

(a) Each domestic and flag air carrier shall establish the daily duty period for

a dispatcher so that it begins at a time that allows him to become thoroughly familiar with existing and anticipated weather conditions along the route before he dispatches any airplane. He shall remain on duty until each airplane dispatched by him has completed its flight, or has gone beyond his jurisdiction, or until he is relieved by another qualified dispatcher.

(b) Except in cases where circumstances or emergency conditions beyond the control of the air carrier require otherwise—

(1) No domestic or flag air carrier may schedule a dispatcher for more than 10 consecutive hours of duty;

(2) If a dispatcher is scheduled for more than 10 hours of duty in 24 consecutive hours, the carrier shall provide him a rest period of at least eight hours at or before the end of 10 hours of duty.

(3) Each dispatcher must be relieved of all duty with the air carrier for at least 24 consecutive hours during any seven consecutive days or the equivalent thereof within any month.

(c) Notwithstanding paragraphs (a) and (b) of this section, a flag air carrier may, if authorized by the Administrator, schedule an aircraft dispatcher at a duty station outside of the 48 contiguous States and the District of Columbia, for more than 10 consecutive hours of duty in a 24-hour period if that aircraft dispatcher is relieved of all duty with the carrier for at least eight hours during each 24-hour period.

Subpart Q—Flight Time Limitations: Domestic Air Carriers

§ 121.470 Applicability.

This subpart prescribes flight time limitations for domestic air carriers.

§ 121.471 Flight time limitations: all flight crewmembers.

(a) No domestic air carrier may schedule any flight crewmember for duty aloft in scheduled air transportation or in other commercial flying if that crewmember's total flight time in all commercial flying will exceed:

(1) 1,000 hours in any year.

(2) 100 hours in any month.

(3) 30 hours in any seven consecutive days.

(b) No domestic air carrier may schedule a flight crewmember for duty aloft for more than eight hours during any 24 consecutive hours without a rest period at or before the end of that eight hours, equal to twice the number of hours of duty aloft since the last rest period, but not less than eight hours. However, in conducting a scheduled transcontinental nonstop flight, an air carrier may schedule a flight crewmember for more than eight but not more than 10 hours of continuous duty aloft without an intervening rest period, if—

(1) The flight is in an airplane with a pressurization system that is operative at the beginning of the flight;

(2) The flight crew consists of at least two pilots and a flight engineer.

(c) Each flight crewmember who has been on duty aloft for more than eight hours during any 24 consecutive hours must be given, upon completion of his assigned flight or series of flights, at least 16 hours of rest before being assigned to any duty with the air carrier.

(d) Each domestic air carrier shall relieve each flight crewmember engaged in scheduled air transportation from all further duty for at least 24 consecutive hours during any seven consecutive days.

(e) No domestic air carrier may assign any flight crewmember to any duty with the air carrier during any required rest period.

(f) Time spent in transportation, not local in character, that an air carrier requires of a flight crewmember and provides to transport the crewmember to an airport at which he is to serve on a flight as a crewmember, or from an airport at which he was relieved from duty to return to his home station, is not considered part of a rest period.

(g) A flight crewmember is not considered to be scheduled for duty in excess of flight time limitations if the flights to which he is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the air carrier (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the scheduled time.

Subpart R—Flight Time Limitations: Flag Air Carriers

§ 121.480 Applicability.

This subpart prescribes flight time limitations for flag air carriers.

§ 121.481 Flight time limitations: one or two pilot crews.

(a) A flag air carrier may schedule a pilot to fly in an airplane that has a crew of one or two pilots for eight hours or less during any 24 consecutive hours without a rest period during these eight hours.

(b) If a flag air carrier schedules a pilot to fly more than eight hours during any 24 consecutive hours, it shall give him an intervening rest period, at or before the end of eight scheduled hours of flight duty. This rest period must be at least twice the number of hours flown since the preceding rest period, but not less than eight hours. The air carrier shall relieve that pilot of all duty with it during that rest period.

(c) Each pilot who has flown more than eight hours during 24 consecutive hours must be given at least 18 hours of rest before being assigned to any duty with the air carrier.

(d) No pilot may fly more than 32 hours during any seven consecutive days, and each pilot must be relieved from all duty for at least 24 consecutive hours at least once during any seven consecutive days.

(e) No pilot may fly as a member of a crew more than 100 hours during any one month.

(f) No pilot may fly as a member of a crew more than 1,000 hours during any 12-month period.

§ 121.483 Flight time limitations: two pilots and one additional flight crewmember.

(a) No flag air carrier may schedule a pilot to fly, in an airplane that has a crew of two pilots and at least one additional flight crewmember, for a total of more than 12 hours during any 24 consecutive hours.

(b) If a pilot has flown 20 or more hours during any 48 consecutive hours or 24 or more hours during any 72 consecutive hours, he must be given at least 18 hours of rest before being assigned to any duty with the air carrier. In any case, he must be given at least 24 consecutive hours of rest during any seven consecutive days.

(c) No pilot may fly as a flight crewmember more than—

(1) 120 hours during any 30 consecutive days;

(2) 300 hours during any 90 consecutive days; or

(3) 1,000 hours during any 12-month period.

§ 121.485 Flight time limitations: three or more pilots and an additional flight crewmember.

(a) Each flag air carrier shall schedule its flight hours to provide adequate rest periods on the ground for each pilot who is away from his base and who is a pilot on an airplane that has a crew of three or more pilots and an additional flight crewmember. It shall also provide adequate sleeping quarters on the airplane whenever a pilot is scheduled to fly more than 12 hours during any 24 consecutive hours.

(b) The flag air carrier shall give each pilot, upon return to his base from any flight or series of flights, a rest period that is at least twice the total number of hours he flew since the last rest period at his base. During the rest period required by this paragraph, the air carrier may not require him to perform any duty for it. If the required rest period is more than seven days, that part of the rest period in excess of seven days may be given at any time before the pilot is again scheduled for flight duty on any route.

(c) No pilot may fly as a flight crewmember more than—

(1) 350 hours during any 90 consecutive days; or

(2) 1,000 hours during any 12-month period.

§ 121.487 Flight time limitations: pilots not regularly assigned.

(a) Except as provided in paragraphs (b) through (e) of this section, a pilot who is not regularly assigned as a flight crewmember for an entire month under § 121.483 or 121.485 may not fly more than 100 hours in any 30 consecutive days.

(b) The flight time limitations for a pilot who is scheduled for duty aloft for more than 20 hours in two-pilot crews in any month, or whose assignment in such a crew is interrupted more than once in that month by assignment to a crew consisting of two or more pilots and an additional flight crewmember, are those set forth in § 121.481.

(c) Except for a pilot covered by paragraph (b) of this section, the flight time limitations for a pilot who is scheduled for duty aloft for more than 20 hours in two-pilot and additional flight crewmember crews in any month, or whose

assignment in such a crew is interrupted more than once in that month by assignment to a crew consisting of three pilots and additional flight crewmember, are those set forth in § 121.483.

(d) The flight time limitations for a pilot to whom paragraphs (b) and (c) of this section do not apply and who is scheduled for duty aloft for a total of not more than 20 hours within any month in two-pilot crews (with or without additional flight crewmembers) are those set forth in § 121.485.

(e) The flight time limitations for a pilot assigned to each of two-pilot, two-pilot and additional flight crewmember, and three-pilot and additional flight crewmember crews in a given month, and who is not subject to paragraph (b), (c), or (d) of this section, are those set forth in § 121.483.

§ 121.489 Flight time limitations: other commercial flying.

No pilot that is employed as a pilot by a flag air carrier may do any other commercial flying if that commercial flying plus his flying in air transportation will exceed any flight time limitation in this part.

§ 121.491 Flight time limitations: deadhead transportation.

Time spent in deadhead transportation to or from duty assignment is not considered to be a part of a rest period.

§ 121.493 Flight time limitations: flight engineers and flight navigators.

(a) In any operation in which one flight engineer or flight navigator is required, the flight time limitations in § 121.483 apply to that flight engineer or flight navigator.

(b) In any operation in which more than one flight engineer or flight navigator is required, the flight time limitations in § 121.485 apply to those flight engineers or flight navigators.

Subpart S—Flight Time Limitations: Supplemental Air Carriers and Commercial Operators

§ 121.500 Applicability.

This section prescribes flight time limitations for supplemental air carriers and commercial operators.

§ 121.501 Flight time limitations: helicopters.

No supplemental air carrier or commercial operator may schedule a flight crewmember for duty aloft in helicopter operations subject to this part, or in any other commercial flying, that would exceed the flight time limitations prescribed in § 127.191.

§ 121.503 Flight time limitations: pilots: airplanes.

(a) A supplemental air carrier or commercial operator may schedule a pilot to fly in an airplane for eight hours or less during any 24 consecutive hours without a rest period during those eight hours.

(b) Each pilot who has flown more than eight hours during any 24 consecutive hours must be given at least 16 hours of rest before being assigned to any duty with the air carrier or commercial operator.

(c) Each supplemental air carrier and commercial operator shall relieve each pilot from all duty for at least 24 consecutive hours at least once during any seven consecutive days.

(d) No pilot may fly as a crewmember in air carrier service more than 100 hours during any 30 consecutive days.

(e) No pilot may fly as a crewmember in air carrier service more than 1,000 hours during any calendar year.

(f) Notwithstanding paragraph (a) of this section, an air carrier may, in conducting a transcontinental nonstop flight, schedule a flight crewmember for more than eight but not more than 10 hours of continuous duty aloft without an intervening rest period, if—

(1) The flight is in an airplane with a pressurization system that is operative at the beginning of the flight;

(2) The Flight crew consists of at least two pilots and a flight engineer; and

(3) The air carrier uses, in conducting the operation, an air/ground communication service that is independent of systems operated by the United States, and a dispatch organization, both of which are approved by the Administrator as adequate to serve the terminal points concerned.

§ 121.505 Flight time limitations: two pilot crews: airplanes.

(a) If a supplemental air carrier or commercial operator schedules a pilot to fly more than eight hours during any 24 consecutive hours, it shall give him an intervening rest period at or before the end of eight scheduled hours of flight duty. This rest period must be at least twice the number of hours flown since the preceding rest period, but not less than eight hours. The supplemental air carrier or commercial operator shall relieve that pilot of all duty with it during that rest period.

(b) No pilot of an airplane that has a crew of two pilots may be on duty for more than 16 hours during any 24 consecutive hours.

§ 121.507 Flight time limitations: three pilot crews: airplanes.

(a) No supplemental air carrier or commercial operator may schedule a pilot—

(1) For flight deck duty in an airplane that has a crew of three pilots for more than eight hours in any 24 consecutive hours; or

(2) To be aloft in an airplane that has a crew of three pilot for more than 12 hours in any 24 consecutive hours.

(b) No pilot of an airplane that has a crew of three pilots may be on duty for more than 18 hours in any 24 consecutive hours.

§ 121.509 Flight time limitations: four pilot crews: airplanes.

(a) No supplemental air carrier or commercial operator may schedule a pilot—

(1) For flight deck duty in an airplane that has a crew of four pilots for more than eight hours in any 24 consecutive hours; or

(2) To be aloft in an airplane that has a crew of four pilots for more than 16 hours in any 24 consecutive hours.

(b) No pilot of an airplane that has a crew of four pilots may be on duty for more than 20 hours in any 24 consecutive hours.

§ 121.511 Flight time limitations: flight engineers: airplanes.

(a) In any operation in which one flight engineer is serving the flight time limitations in §§ 121.503 and 121.505 apply to that flight engineer.

(b) In any operation in which more than one flight engineer is serving and the flight crew contains more than two pilots the flight time limitations in § 121.509 apply in place of those in § 121.505.

§ 121.513 Flight time limitations: overseas and international operations: airplanes.

In place of the flight time limitations in §§ 121.503 through 121.511, a supplemental air carrier or commercial operator may elect to comply with the flight time limitations of §§ 121.515 and 121.521 through 121.525 for operations conducted—

(a) Between a place in the 48 contiguous States and the District of Columbia, or Alaska, and any place outside thereof;

(b) Between any two places outside the 48 contiguous States, the District of Columbia, and Alaska; or

(c) Between two places within the State of Alaska or the State of Hawaii.

§ 121.515 Flight time limitations: all airmen: airplanes.

No airman may be aloft as a flight crewmember more than 1,000 hours in any 12-month period.

§ 121.517 Flight time limitations: other commercial flying: airplanes.

No airman who is employed by a supplemental air carrier or commercial operator may do any other commercial flying, if that commercial flying plus his flying in operations under this part will exceed any flight time limitation in this part.

§ 121.519 Flight time limitations: deadhead transportation: airplanes.

Time spent by an airman in deadhead transportation to or from a duty assignment is not considered to be part of any rest period.

§ 121.521 Flight time limitations: crew of two pilots and one additional airman as required.

(a) No supplemental air carrier or commercial operator may schedule an airman to be aloft as a member of the flight crew in an airplane that has a crew of two pilots and at least one additional crewmember for more than 12 hours during any 24 consecutive hours.

(b) If an airman has been aloft as a member of a flight crew for 20 or more hours during any 48 consecutive hours or 24 or more hours during any 72 consecutive hours, he must be given at least 18 hours of rest before being assigned to any duty with the air carrier or commercial operator. In any case, he must be relieved of all duty for at least 24

consecutive hours during any seven consecutive days.

(c) No airman may be aloft as a flight crewmember more than—

(1) 120 hours during any 30 consecutive days; or

(2) 300 hours during any 90 consecutive days.

§ 121.523 Flight time limitations: crew of three or more pilots and additional airmen as required.

(a) No supplemental air carrier or commercial operator may schedule an airman for flight deck duty as a flight engineer, or navigator in a crew of three or more pilots and additional airmen for a total of more than 12 hours during any 24 consecutive hours.

(b) Each supplemental air carrier and commercial operator shall schedule its flight hours to provide adequate rest periods on the ground for each airman who is away from his principal operations base. It shall also provide adequate sleeping quarters on the airplane whenever an airman is scheduled to be aloft as a flight crewmember for more than 12 hours during any 24 consecutive hours.

(c) No supplemental air carrier or commercial operator may schedule any flight crewmember to be on continuous duty for more than 30 hours. Such a crewmember is considered to be on continuous duty from the time he reports for duty until the time he is released from duty for a rest period of at least 10 hours on the ground. If a flight crewmember is on continuous duty for more than 24 hours (whether scheduled or not) duty any scheduled duty period, he must be given at least 16 hours for rest on the ground after completing the last flight scheduled for that scheduled duty period before being assigned any further flight duty.

(d) If a flight crewmember is required to engage in deadhead transportation for more than four hours before beginning flight duty, one half of the time spent in deadhead transportation must be treated as duty time for the purpose of complying with duty time limitations, unless he is given at least 10 hours of rest on the ground before being assigned to flight duty.

(e) Each supplemental air carrier and commercial operator shall give each airman, upon return to his operations base from any flight or series of flights, a rest period that is at least twice the total number of hours he was aloft as a flight crewmember since the last rest period at his base, before assigning him to any further duty. If the required rest period is more than seven days, that part of the rest period that is more than seven days may be given at any time before the pilot is again scheduled for flight duty.

(f) No airman may be aloft as a flight crewmember for more than 350 hours in any 90 consecutive days.

§ 121.525 Flight time limitations: pilots serving in more than one kind of flight crew.

(a) This section applies to each pilot assigned during any 30 consecutive days to more than one type of flight crew.

(b) The flight time limitations for a pilot who is scheduled for duty aloft for more than 20 hours in two-pilot crews in 30 consecutive days, or whose assignment in such a crew is interrupted more than once in any 30 consecutive days by assignment to a crew of two or more pilots and an additional flight crewmember, are those listed in §§ 121.503 through 121.509, as appropriate.

(c) Except for a pilot covered by paragraph (b) of this section, the flight time limitations for a pilot scheduled for duty aloft for more than 20 hours in two-pilot and additional flight crewmember crews in 30 consecutive days or whose assignment in such a crew is interrupted more than once in any 30 consecutive days by assignment to a crew consisting of three pilots and an additional flight crewmember, are those set forth in § 121.521.

(d) The flight time limitations for a pilot to whom paragraphs (b) and (c) of this section do not apply, and who is scheduled for duty aloft for a total of not more than 20 hours within 30 consecutive days in two-pilot crews (with or without additional flight crewmembers) are those set forth in § 121.523.

(e) The flight time limitations for a pilot assigned to each of two-pilot, two-pilot and additional flight crewmember, and three-pilot and additional flight crewmember crews in 30 consecutive days, and who is not subject to paragraph (b), (c), or (d) of this section, are those listed in § 121.523.

Subpart T—Flight Operations

§ 121.531 Applicability.

This subpart prescribes requirements for flight operations applicable to all certificate holders, except where otherwise specified.

§ 121.533 Responsibility for operational control: domestic air carriers.

(a) Each domestic air carrier is responsible for operational control.

(b) The pilot in command and the aircraft dispatcher are jointly responsible for the preflight planning, delay, and dispatch release of a flight in compliance with this chapter and operations specifications.

(c) The aircraft dispatcher is responsible for—

(1) Monitoring the progress of each flight;

(2) Issuing necessary information for the safety of the flight; and

(3) Cancelling or redispatching a flight if, in his opinion or the opinion of the pilot in command, the flight cannot operate or continue to operate safely as planned or released.

(d) Each pilot in command of an aircraft is, during flight time, in command of the aircraft and crew and is responsible for the safety of the passengers, crewmembers, cargo, and airplane.

(e) Each pilot in command has full control and authority in the operation of the aircraft, without limitation, over other crewmembers and their duties during flight time, whether or not he holds valid certificates authorizing him to perform the duties of those crewmembers.

§ 121.535 Responsibility for operational control: flag air carriers.

(a) Each flag air carrier is responsible for operational control.

(b) The pilot in command and the aircraft dispatcher are jointly responsible for the preflight planning, delay, and dispatch release of a flight in compliance with this chapter and operations specifications.

(c) The aircraft dispatcher is responsible for—

(1) Monitoring the progress of each flight;

(2) Issuing necessary instructions and information for the safety of the flight; and

(3) Cancelling or redispatching a flight if, in his opinion or the opinion of the pilot in command, the flight cannot operate or continue to operate safely as planned or released.

(d) Each pilot in command of an aircraft is, during flight time, in command of the aircraft and crew and is responsible for the safety of the passengers, crewmembers, cargo, and airplane.

(e) Each pilot in command has full control and authority in the operation of the aircraft, without limitation, over other crewmembers and their duties during flight time, whether or not he holds valid certificates authorizing him to perform the duties of those crewmembers.

(f) No pilot may operate an aircraft in a careless or reckless manner so as to endanger life or property.

§ 121.537 Responsibility for operational control: supplemental air carriers and commercial operators.

(a) Each supplemental air carrier and commercial operator—

(1) Is responsible for operational control; and

(2) Shall list each person authorized by it to exercise operational control in its operator's manual.

(b) The pilot in command and the director of operations are jointly responsible for the initiation, continuation, diversion, and termination of a flight in compliance with this chapter and the operations specifications. The director of operations may delegate the functions for the initiation, continuation, diversion, and termination of a flight but he may not delegate the responsibility for those functions.

(c) The director of operations is responsible for canceling, diverting, or delaying a flight if in his opinion or the opinion of the pilot in command the flight cannot operate or continue to operate safely as planned or released. The director of operations is responsible for assuring that each flight is monitored with respect to at least the following:

(1) Departure of the flight from the place of origin and arrival at the place of destination, including intermediate stops and any diversions therefrom.

(2) Maintenance and mechanical delays encountered at places of origin and destination and intermediate stops.

(3) Any known conditions that may adversely affect the safety of flight.

(d) Each pilot in command of an aircraft is, during flight time, in command of the aircraft and crew and is responsi-

ble for the safety of the passengers, crewmembers, cargo, and aircraft. The pilot in command has full control and authority in the operation of the aircraft, without limitation, over other crewmembers and their duties during flight time, whether or not he holds valid certificates authorizing him to perform the duties of those crewmembers.

(e) Each pilot in command of an aircraft is responsible for the preflight planning and the operation of the flight in compliance with this chapter and the operations specifications.

(f) No pilot may operate an aircraft in a careless or reckless manner, so as to endanger life or property.

§ 121.539 Operations notices.

Each certificate holder shall notify its appropriate operations personnel of each change in equipment and operating procedures, including each known change in the use of navigation aids, airports, air traffic control procedures and regulations, local airport traffic control rules, and known hazards to flight, including icing and other potentially hazardous meteorological conditions and irregularities in ground and navigation facilities.

§ 121.541 Operations schedules: domestic and flag air carriers.

In establishing flight operations schedules, each domestic and flag air carrier shall allow enough time for the proper servicing of aircraft at intermediate stops, and shall consider the prevailing winds en route and the cruising speed of the type of aircraft used. This cruising speed may not be more than that resulting from the specified cruising output of the engines.

§ 121.543 Flight crewmembers at controls.

Each required flight crewmember on flight deck duty shall remain at his station while the aircraft is taking off or landing, and while it is en route unless the absence of one member is necessary for the performance of duties in connection with the operation of the airplane. Each flight crewmember shall keep his seat belt fastened when at his station.

§ 121.545 Manipulation of controls.

No person may manipulate the flight controls of an aircraft during flight unless he is—

(a) A qualified pilot of the certificate holder operating that aircraft.

(b) An authorized pilot safety representative of the Administrator or of the Civil Aeronautics Board who has the permission of the pilot in command, is qualified in the aircraft, and is checking flight operations; or

(c) A pilot of another certificate holder who has the permission of the pilot in command, is qualified in the aircraft, and is authorized by the certificate holder operating the aircraft.

§ 121.547 Admission to flight deck.

(a) No person may admit any person to the flight deck of an aircraft unless the person being admitted is—

(1) A crewmember;

(2) An FAA air carrier inspector, or an authorized representative of the Civil Aeronautics Board, who is performing official duties;

(3) An employee of the United States, a certificate holder, or an aeronautical enterprise who has the permission of the pilot in command and whose duties are such that admission to the flight deck is necessary or advantageous for safe operations; or

(4) Any person who has the permission of the pilot in command and is specifically authorized by the certificate holder management and by the Administrator.

Subparagraph (2) of this paragraph does not limit the emergency authority of the pilot in command to exclude any person from the flight deck in the interests of safety.

(b) For the purposes of paragraph (a) (3) of this section, employees of the United States who deal responsibly with matters relating to safety and employees of the certificate holder whose efficiency would be increased by familiarity with flight conditions, may be admitted by the certificate holder. However, the certificate holder may not admit employees of traffic, sales, or other departments that are not directly related to flight operations, unless they are eligible under paragraph (a) (4) of this section.

(c) No person may admit any person to the flight deck unless there is a seat available for his use in the passenger compartment, except—

(1) An FAA air carrier inspector or an authorized representative of the Administrator or Civil Aeronautics Board who is checking or observing flight operations;

(2) An air traffic controller who is authorized by the Administrator to observe ATC procedures;

(3) A certificated airman employed by the certificate holder whose duties require an airman certificate;

(4) A certificated airman employed by another certificate holder whose duties with that carrier require an airman certificate and who is authorized by the certificate holder operating the aircraft to make specific trips over a route;

(5) An employee of the certificate holder operating the aircraft whose duty is directly related to the conduct or planning of flight operations or the in-flight monitoring of aircraft equipment or operating procedures, if his presence on the flight deck is necessary to perform his duties and he has been authorized in writing by a responsible supervisor, listed in the Operations Manual as having that authority; and

(6) A technical representative of the manufacturer of the aircraft or its components whose duties are directly related to the in-flight monitoring of aircraft equipment or operating procedures, if his presence on the flight deck is necessary to perform his duties, and he has been authorized in writing by the Administrator and by a responsible supervisor of the operations department of the certificate holder, listed in the Operations Manual as having that authority.

§ 121.548 Air carrier inspector's credentials: admission to pilot's compartment.

Whenever, in performing his duties of conducting an inspection, an inspector of the Federal Aviation Agency presents his credential Form FAA 110A "Air Carrier Inspector's Credential" to the pilot in command of an aircraft operated by an air carrier or commercial operator, he must be given free and uninterrupted access to the pilot's compartment of that aircraft.

§ 121.549 Flying equipment.

(a) The pilot in command shall ensure that appropriate aeronautical charts containing adequate information concerning navigation aids and instrument approach procedures are aboard the aircraft for each flight.

(b) Each crewmember shall, on each flight, have readily available for his use a flashlight that is in good working order.

§ 121.551 Restriction or suspension of operation: domestic and flag air carriers.

When a domestic or flag air carrier knows of conditions, including airport and runway conditions, that are a hazard to safe operations, it shall restrict or suspend operations until those conditions are corrected.

§ 121.553 Restriction or suspension of operation: supplemental air carriers and commercial operators.

When a supplemental air carrier, commercial operator, or pilot in command knows of conditions, including airport and runway conditions, that are a hazard to safe operations, the air carrier, commercial operator, or pilot in command, as the case may be, shall restrict or suspend operations until those conditions are corrected.

§ 121.555 Compliance with approved routes and limitations: domestic and flag air carriers.

No pilot may operate an airplane in scheduled air transportation—

(a) Over any route or route segment unless it is specified in the domestic or flag air carrier's operations specifications; or

(b) Other than in accordance with the limitations in the operations specifications.

§ 121.557 Emergencies: domestic and flag air carriers.

(a) In an emergency situation that requires immediate decision and action the pilot in command may take any action that he considers necessary under the circumstances. In such a case he may deviate from prescribed operations procedures and methods, weather minimums, and this chapter, to the extent required in the interests of safety.

(b) In an emergency situation arising during flight that requires immediate decision and action by an aircraft dispatcher, and that is known to him, the aircraft dispatcher shall advise the pilot in command of the emergency, shall ascertain the decision of the pilot in command, and shall have the decision re-

corded. If the aircraft dispatcher cannot communicate with the pilot, he shall declare an emergency and take any action that he considers necessary under the circumstances.

(c) Whenever a pilot in command or dispatcher exercises emergency authority, he shall keep the appropriate ATC facility and dispatch centers fully informed of the progress of the flight. The person declaring the emergency shall send a written report of any deviation through the air carrier's operations manager, to the Administrator. A dispatcher shall send his report within 10 days after the date of the emergency, and a pilot in command shall send his report within 10 days after returning to his home base.

§ 121.559 Emergencies: supplemental air carriers and commercial operators.

(a) In an emergency situation that requires immediate decision and action, the pilot in command may take any action that he considers necessary under the circumstances. In such a case, he may deviate from prescribed operations, procedures and methods, weather minimums, and this chapter, to the extent required in the interests of safety.

(b) In an emergency situation arising during flight that requires immediate decision and action by appropriate management personnel in the case of operations conducted with a flight following service and which is known to them, those personnel shall advise the pilot in command of the emergency, shall ascertain the decision of the pilot in command, and shall have the decision recorded. If they cannot communicate with the pilot, they shall declare an emergency and take any action that they consider necessary under the circumstances.

(c) Whenever emergency authority is exercised, the pilot in command or the appropriate management personnel shall keep the appropriate ground radio station fully informed of the progress of the flight. The person declaring the emergency shall send a written report of any deviation, through the air carrier's or commercial operator's director of operations, to the Administrator within 10 days after the flight is completed or, in the case of operations outside the United States, upon return to the home base.

§ 121.561 Reporting potentially hazardous meteorological conditions and irregularities of ground and navigation facilities.

(a) Whenever he encounters a meteorological condition or an irregularity in a ground or navigational facility, in flight, the knowledge of which he considers essential to the safety of other flights, the pilot in command shall notify an appropriate ground station as soon as practicable.

(b) The ground radio station that is notified under paragraph (a) of this section shall report the information to the agency directly responsible for operating the facility.

§ 121.563 Reporting mechanical irregularities.

The pilot in command shall enter or have entered in the maintenance log of the airplane each mechanical irregularity that comes to his attention during flight time. Before each flight, he shall ascertain the status of each irregularity entered in the log at the end of the preceding flight.

§ 121.565 Engine inoperative; landing; reporting.

(a) Except as provided in paragraph (b) of this section, whenever an engine of an airplane fails or whenever the rotation of an engine is stopped to prevent possible damage, the pilot in command shall land the airplane at the nearest suitable airport, in point of time, at which a safe landing can be made.

(b) If not more than one engine of an airplane that has three or more engines fails or its rotation is stopped, the pilot in command may proceed to an airport that he selects if, after considering the following, he decides that proceeding to that airport is as safe as landing at the nearest suitable airport:

(1) The nature of the malfunction and the possible mechanical difficulties that may occur if flight is continued.

(2) The altitude, weight, and usable fuel at the time of engine stoppage.

(3) The weather conditions en route and at possible landing points.

(4) The air traffic congestion.

(5) The kind of terrain.

(6) His familiarity with the airport to be used.

(c) The pilot in command shall report each stoppage of engine rotation in flight to the appropriate ground radio station as soon as practicable and shall keep that station fully informed of the progress of the flight.

(d) If the pilot in command lands at an airport other than the nearest suitable airport, in point of time, he shall (upon completing the trip) send a written report, in duplicate, to his operations manager, (or director of operations in the case of a supplemental air carrier or commercial operator) stating his reasons for determining that his selection of an airport, other than the nearest airport, was as safe a course of action as landing at the nearest suitable airport. The operations manager or director of operations shall, within 10 days after the pilot returns to his home base, send a copy of this report with his comments to the FAA Air Carrier District Office charged with the overall inspection of the air carrier's operations.

§ 121.567 Instrument approach procedures and IFR landing minimums.

No person may make an instrument approach at an airport except in accordance with IFR weather minimums and instrument approach procedures set forth in the certificate holder's operations specifications.

§ 121.569 Equipment interchange: domestic and flag air carriers.

(a) Before operating under an interchange agreement, each domestic and flag air carrier shall show that—

(1) The procedures for the interchange operation conform with this chapter and with safe operating practices;

(2) Required crewmembers and dispatchers meet approved training requirements for the airplanes and equipment to be used and are familiar with the communications and dispatch procedures to be used;

(3) Maintenance personnel meet training requirements for the airplanes and equipment, and are familiar with the maintenance procedures to be used;

(4) Flight crewmembers and dispatchers meet appropriate route and airport qualifications; and

(5) The airplanes to be operated are essentially similar to the airplanes of the air carrier with whom the interchange is effected with respect to the arrangement of flight instruments and the arrangement and motion of controls that are critical to safety unless the Administrator determines that the air carrier has adequate training programs to insure that any potentially hazardous dissimilarities are safely overcome by flight crew familiarization.

(b) Each domestic and flag air carrier shall include the pertinent provisions and procedures involved in the equipment interchange agreement in its manuals.

§ 121.571 Briefing passengers: extended overwater flights.

(a) Each certificate holder operating an airplane in extended overwater operations shall ensure that all passengers are orally briefed on—

(1) The location and operation of emergency exists;

(2) The location and operation of life preservers, including a demonstration of donning and inflating a life preserver; and

(3) The location of life rafts.

(b) The certificate holder shall describe the procedure to be followed in the briefing in its manual.

(c) If the airplane proceeds directly over water after takeoff, the briefing on locations of life preservers and emergency exists must be done before takeoff, and the rest of the briefing must be done as soon as practicable after takeoff.

(d) If the airplane does not proceed directly over water after takeoff, no part of the briefing has to be given before takeoff but the entire briefing must be given before reaching the over water part of the flight.

§ 121.573 Briefing passengers before takeoff: supplemental air carriers and commercial operators.

Before each takeoff, each supplemental air carrier or commercial operator operating an airplane carrying passengers shall ensure that each passenger is orally briefed on—

(a) Smoking;

(b) The use of seat belts;

(c) The location and operation of emergency exits; and

(d) The emergency evacuation procedures to be used in an emergency evacuation of the airplane.

§ 121.575 Alcoholic beverages.

(a) No person may drink any alcoholic beverage aboard an aircraft unless the certificate holder operating the aircraft has served that beverage to him.

(b) No certificate holder may serve any alcoholic beverage to any person aboard any of its aircraft if that person appears to be intoxicated.

(c) No certificate holder may allow any person to board any of its aircraft if that person appears to be intoxicated.

(d) Each certificate holder shall, within five days after the incident, report to the Administrator the refusal of any person to comply with paragraph (a) of this section, or of any disturbance caused by a person who appears to be intoxicated aboard any of its aircraft.

§ 121.579 Minimum altitudes for use of automatic pilot.

(a) *En route operations.* Except as provided in paragraph (b) of this section, no person may use an automatic pilot en route, including climb and descent, at an altitude above the terrain that is less than twice the maximum altitude loss specified in the Airplane Flight Manual for a malfunction of the automatic pilot under cruise conditions, or less than 500 feet, whichever is higher.

(b) *Approaches.* When using an instrument approach facility, no person may use an automatic pilot at an altitude above the terrain that is less than twice the maximum altitude loss specified in the Airplane Flight Manual for a malfunction of the automatic pilot under approach conditions, or less than 50 feet below the approved minimum ceiling for the facility, whichever is higher, except—

(1) When reported weather conditions are less than the basic VFR weather conditions in § 91.105 of this chapter, no person may use an automatic pilot with an approach coupler for ILS approaches at an altitude above the terrain that is less than 50 feet higher than the maximum altitude loss specified in the Airplane Flight Manual for the malfunction of the automatic pilot with approach coupler under approach conditions; and

(2) When reported weather conditions are equal to or better than the basic VFR minimums in § 91.105 of this chapter, no person may use an automatic pilot with an approach coupler for ILS approaches at an altitude above the terrain that is less than the maximum altitude loss specified in the Airplane Flight Manual for the malfunction of the automatic pilot with approach coupler under approach conditions, or 50 feet, whichever is higher.

§ 121.581 Forward observer's seat; en route inspections: air carriers.

(a) Each air carrier shall make available a seat on the flight deck of each airplane, used by it in air transportation, for occupancy by the Administrator while conducting en route inspections. The location and equipment of the seat, with respect to its suitability for use in conducting en route inspections, is determined by the Administrator.

(b) In each airplane that has more than one observer's seat, in addition to the seats required for the crew complement for which the airplane was certificated, the forward observer's seat must be made available to the Administrator.

§ 121.583 Carriage of persons aboard airplane in cargo-only operations all-cargo aircraft.

(a) When authorized by the certificate holder operating the airplane, any of the following persons may be carried aboard an airplane engaged in the carriage of cargo only, without complying with the passenger-carrying or passenger-service airplane requirements of this chapter:

(1) Any person performing a specific duty assignment aboard the airplane in connection with the safety of the flight, the safe carriage of animals, or the safe carriage of radioactive materials as prescribed in §§ 103.1, 103.5, and 103.21 of this chapter.

(2) Any person traveling to or from a duty assignment described in subparagraph (1) of this paragraph, in any case in which the certificate holder finds that other means of transportation are not practicable.

(3) Any person performing duty as a security or honor guard aboard an airplane for shipments made by or under the authority of the United States.

(4) Any military courier, military route supervisor, or flight crewmembers of any military cargo contract air carrier or commercial operator, when operating under a military cargo contract and specifically authorized by the appropriate armed forces.

(5) Any employee of the certificate holder and his dependents when traveling on company business to or from outlying stations not served by adequate regular passenger flights.

(b) Whenever any person covered by paragraph (a)(5) of this section is carried on the airplane, the cargo must be loaded in such a manner that it does not obstruct access to the pilot compartment, or appropriate regular or emergency exits. In addition, for extended overwater flights, or for flights over uninhabited terrain, there must be on the airplane emergency and survival equipment adequate for the particular operation. Procedures for the safe carriage of company employees and their dependents must be incorporated into the air carrier's or commercial operator's operations manual.

(c) The certificate holder must have an approved seat with a safety belt for each person covered by paragraph (a) of this section. The seat must be located so that the occupant is not in any position to interfere with the flight crewmembers in performing their duties.

(d) The pilot in command may authorize any person covered by paragraph (a) of this section to be admitted to the flight deck of the airplane.

§ 121.585 Prohibition against carriage of weapons.

No person may, while aboard an airplane being operated by an air carrier in air transportation, carry on or about his person a deadly or dangerous weapon, either concealed or unconcealed. This paragraph does not apply to—

(a) Officials or employees of a municipality or a State, or of the United States, who are authorized to carry arms; and

(b) Crewmembers and other persons authorized by the air carrier to carry arms.

§ 121.587 Closing and locking of flight crew compartment door.

(a) Except as provided in paragraph (b) of this section, the pilot in command of a large airplane carrying passengers shall ensure that the door separating the flight crew compartment from the passenger compartment is closed and locked during flight.

(b) The provisions of paragraph (a) of this section do not apply—

(1) During takeoff and landing if the crew compartment door is the means of access to a required passenger emergency exit; or

(2) At any time that it is necessary to provide access to the flight crew or passenger compartment, to a crewmember in the performance of his duties or for a person authorized admission to the flight crew compartment under § 121.547.

Subpart U—Dispatching and Flight Release Rules

§ 121.591 Applicability.

This subpart prescribes dispatching rules for domestic and flag air carriers and flight release rules for supplemental air carriers and commercial operators.

§ 121.593 Dispatching authority: domestic air carriers.

Except when an airplane lands at an intermediate airport specified in the original dispatch release and remains there for not more than one hour, no person may start a flight unless an aircraft dispatcher specifically authorizes that flight.

§ 121.595 Dispatching authority: flag air carriers.

(a) No person may start a flight unless an aircraft dispatcher specifically authorizes that flight.

(b) No person may continue a flight from an intermediate airport without redispatch if the airplane has been on the ground more than six hours.

§ 121.597 Flight release authority: supplemental air carriers and commercial operators.

(a) No person may start a flight under a flight following system without specific authority from the person authorized by the operator to exercise operational control over the flight.

(b) No person may start a flight unless the pilot in command has executed a flight release setting forth the conditions under which the flight will be conducted. The pilot in command may sign the flight release only when he and the person authorized by the operator to exercise operational control believe that the flight can be made with safety.

(c) No person may continue a flight from an intermediate airport without a new flight release if the aircraft has been on the ground more than six hours.

§ 121.599 Familiarity with weather conditions.

(a) *Domestic and flag air carriers.* No aircraft dispatcher may release a flight unless he is thoroughly familiar with reported and forecast weather conditions on the route to be flown.

(b) *Supplemental air carriers and commercial operators.* No pilot in command may begin a flight unless he is thoroughly familiar with reported and forecast weather conditions on the route to be flown.

§ 121.601 Aircraft dispatcher information to pilot in command: domestic and flag air carriers.

(a) The aircraft dispatcher shall provide the pilot in command all available current reports or information on airport conditions and irregularities of navigation facilities that may affect the safety of the flight.

(b) During a flight, the aircraft dispatcher shall provide the pilot in command any additional available information of meteorological conditions and irregularities of facilities and services that may affect the safety of the flight.

§ 121.603 Facilities and services: supplemental air carriers and commercial operators.

(a) Before beginning a flight, each pilot in command shall obtain all available current reports or information on airport conditions and irregularities of navigation facilities that may affect the safety of the flight.

(b) During a flight, the pilot in command shall obtain any additional available information of meteorological conditions and irregularities of facilities and services that may affect the safety of the flight.

§ 121.605 Airplane equipment.

No person may dispatch or release an airplane unless it is airworthy and is equipped as prescribed in § 121.303.

§ 121.607 Communication and navigation facilities: domestic and flag air carriers.

(a) Except as provided in paragraph (b) of this section for flag air carriers, no person may dispatch an airplane over an approved route or route segment unless the communication and navigation facilities required by §§ 121.99 and 121.103 for the approval of that route or segment are in satisfactory operating condition.

(b) If, because of technical reasons or other reasons beyond the control of a flag air carrier, the facilities required by §§ 121.99 and 121.103 are not available over a route or route segment outside the United States, the air carrier may dispatch an airplane over that route or route segment if the pilot in command and dispatcher find that communication and navigation facilities equal to those required are available and are in satisfactory operating condition.

§ 121.609 Communication and navigation facilities: supplemental air carriers and commercial operators.

No person may release an aircraft over any route or route segment unless communication and navigation facilities equal to those required by § 121.121 are in satisfactory operating condition.

§ 121.611 Dispatch or flight release under VFR.

No person may dispatch or release an aircraft for VFR operation unless the ceiling and visibility en route, as indicated by available weather reports or forecasts, or any combination thereof, are and will remain at or above applicable VFR minimums until the aircraft arrives at the airport or airports specified in the dispatch or flight release.

§ 121.613 Dispatch or flight release under IFR or over the top.

Except as provided in § 121.615, no person may dispatch or release an aircraft for operations under IFR or over-the-top, unless appropriate weather reports or forecasts, or any combination thereof, indicate that the ceilings and visibilities will be at or above the authorized minimums at the estimated time of arrival at the airport or airports to which dispatched or released.

§ 121.615 Dispatch or flight release over water: flag and supplemental air carriers and commercial operators.

(a) No person may dispatch or release an aircraft for a flight that involves extended overwater operation unless appropriate weather reports or forecasts, or any combination thereof, indicate that the ceilings and visibilities will be at or above the authorized minimums at the estimated time of arrival at any airport to which dispatched or released or to any required alternate airport.

(c) Each flag and supplemental air carrier and commercial operator shall conduct extended overwater operations under IFR unless it shows that operating under IFR is not necessary for safety.

(d) Each flag and supplemental air carrier and commercial operator shall conduct other overwater operations under IFR if the Administrator determines that operation under IFR is necessary for safety.

(e) Each authorization to conduct extended overwater operations under VFR and each requirement to conduct other overwater operations under IFR will be specified in the air carrier's or commercial operator's operations specifications.

§ 121.617 Alternate airport for departure.

(a) If the weather conditions at the airport of takeoff are below the landing minimums in the certificate holder's operations specifications for that airport, no person may dispatch or release an aircraft from that airport unless the dispatch or flight release specifies an alternate airport located within the following distances from the airport of takeoff.

(1) *Aircraft having two engines.* Not more than one hour from the departure airport at normal cruising speed in still air with one engine inoperative.

(2) *Aircraft having three or more engines.* Not more than two hours from the departure airport at normal cruising speed in still air with one engine inoperative.

(b) For the purpose of paragraph (a) of this section, the alternate airport weather conditions must meet the requirements of the certificate holder's operations specifications.

(c) No person may dispatch or release an aircraft from an airport unless he lists each required alternate airport in the dispatch or flight release.

§ 121.619 Alternate airport for destination: IFR or over-the-top: domestic air carriers.

(a) No person may dispatch an airplane under IFR or over-the-top unless he lists at least one alternate airport for each destination airport in the dispatch release. When the weather conditions forecast for the destination and first alternate airport are marginal at least one additional alternate must be designated. However, no alternate airport is required if—

(1) For at least two hours before and two hours after the estimated time of arrival, the ceiling at the airport to which the flight is dispatched is forecast to be at least 1,000 feet above the minimum initial approach altitude to that airport; and

(2) The visibility at that airport is forecast to be at least 3 miles.

(b) For the purposes of paragraph (a) of this section, the weather conditions at the alternate airport must meet the requirements of § 121.625.

(c) No person may dispatch a flight unless he lists each required alternate airport in the dispatch release.

§ 121.621 Alternate airport for destination: flag air carriers.

(a) No person may dispatch an airplane under IFR or over-the-top unless he lists at least one alternate airport for each destination airport in the dispatch release, unless—

(1) The flight is scheduled for not more than six hours and the ceiling is forecast to be at least 1,000 feet above the minimum initial approach altitude, and the visibility is forecast to be at least three miles, at the destination airport for two hours before and two hours after the estimated time of arrival; or

(2) The flight is over a route approved without an available alternate airport for a particular destination airport and the airplane has enough fuel to meet the requirements of §§ 121.641(b) or 121.645(b).

(b) For the purposes of paragraph (a) of this section, the weather conditions at the alternate airport must meet the requirements of the air carrier's operations specifications.

(c) No person may dispatch a flight unless he lists each required alternate airport in the dispatch release.

§ 121.623 Alternate airport for destination; IFR or over-the-top: supplemental air carriers and commercial operators.

(a) Except as provided in paragraph (b) of this section, each person releasing an aircraft for operation under IFR or over-the-top shall list at least one alternate airport for each destination airport in the flight release.

(b) An alternate airport need not be designated for IFR or over-the-top operations where the aircraft carries enough fuel to meet the requirements of §§ 121.643 and 121.645 for flights outside the 48 contiguous States and the District of Columbia over routes without an available alternate airport for a particular airport of destination.

(c) For the purposes of paragraph (a) of this section, the weather requirements at the alternate airport must meet the requirements of the air carrier's or commercial operator's operations specifications.

(d) No person may release a flight unless he lists each required alternate airport in the flight release.

§ 121.625 Alternate airport weather minimums.

No person may list an airport as an alternate airport in the dispatch or flight release unless the appropriate weather reports or forecasts, or any combination thereof, indicate that the ceilings and visibilities will be at or above the alternate weather minimums specified in the certificate holder's operations specifications for that airport when the flight arrives.

§ 121.627 Continuing flight in unsafe conditions.

(a) No pilot in command may allow a flight to continue toward any airport to which it has been dispatched or released if, in the opinion of the pilot in command or dispatcher (domestic and flag air carriers only), the flight cannot be completed safely; unless, in the opinion of the pilot in command, there is no safer procedure. In that event, continuation toward that airport is an emergency situation as set forth in § 121.557.

(b) If any instrument or item of equipment required under this chapter for the particular operation becomes inoperative en route, the pilot in command shall comply with the approved procedures for such an occurrence as specified in the certificate holder's manual.

(c) The minimum equipment list and procedures for continuing flight beyond a terminal point with equipment required in § 121.303(d) inoperative may be included in the certificate holder's manual if the Administrator finds that, in a particular situation literal compliance with those equipment requirements is not necessary in the interests of safety.

§ 121.629 Operation in icing conditions.

(a) No person may dispatch or release an aircraft, continue to operate an aircraft en route, or land an aircraft when in the opinion of the pilot in command or aircraft dispatcher (domestic and flag air carriers only), icing conditions are expected or met that might adversely affect the safety of the flight.

(b) No person may takeoff an aircraft when frost, snow, or ice is adhering to the wings, control surfaces, or propellers of the aircraft.

§ 121.631 Original dispatch or flight release, redispatch or amendment of dispatch or flight release.

(a) A certificate holder may specify any regular, provisional, or refueling airport, authorized for the type of aircraft, as a destination for the purpose of original dispatch or release.

(b) No person may allow a flight to continue to an airport to which it has been dispatched or released unless the weather conditions at an alternate airport that was specified in the dispatch or flight release are forecast to be at or above the alternate minimums specified in the operations specifications for that airport at the time the aircraft would arrive at the alternate airport. However, the dispatch or flight release may be amended en route to include any alternate airport that is within the fuel range of the aircraft as specified in §§ 121.639 through 121.649.

(c) No person may change an original destination or alternate airport that is specified in the original dispatch or flight release to another airport while the aircraft is en route unless the other airport is authorized for that type of aircraft and the appropriate requirements of §§ 121.593 through 121.659 and 121.173 are met at the time of redispatch or amendment of the flight release.

(d) Each person who amends a dispatch or flight release en route shall record that amendment.

§ 121.633 Dispatch to and from provisional airports: domestic air carriers.

(a) No person may dispatch an airplane to a provisional airport unless that airport meets the requirements of this part applicable to regular airports.

(b) No person may dispatch an airplane from a provisional airport except in accordance with the requirements of this part applicable to dispatch from regular airports.

§ 121.635 Dispatch to and from refueling or provisional airports: flag air carriers.

No person may dispatch an airplane to or from a refueling or provisional airport unless that airport meets the requirements of this part applicable to regular airports.

§ 121.637 Takeoffs from unlisted and alternate airports: domestic and flag air carriers.

(a) No pilot may take off an airplane from an airport that is not listed in the operations specifications unless—

(1) The airport and related facilities are adequate for the operation of the airplane;

(2) He can comply with the applicable airplane operating limitations;

(3) The airplane has been dispatched according to dispatching rules applicable to operation from an approved airport; and

(4) The ceiling and visibility at that airport are equal to or better than the following:

(i) *Airports in the United States.* The ceiling and visibility minimums for takeoff prescribed in Part 97 of this chapter, but not less than 300–1; or where minimums are not prescribed for the airport, 800–2, 900–1½, or 1,000–1.

(ii) *Airports outside the United States.* The ceiling and visibility minimums for takeoff prescribed or approved by the government of the country in which the airport is located, but not less than 300–1; or where minimums are not prescribed or approved for the airport, 800–2, 900–1½, or 1,000–1.

(b) No pilot may take off from an alternate airport unless the ceiling and visibility are at least equal to the minimums prescribed in the air carrier's operations specifications for alternate airports.

§ 121.639 Fuel supply; all operations: domestic air carriers.

No person may dispatch or take off an airplane unless it has enough fuel—

(a) To fly to the airport to which it is dispatched;

(b) Thereafter, to fly to and land at the most distant alternate airport (where required) for the airport to which dispatched; and

(c) Thereafter, to fly for 45 minutes at normal cruising fuel consumption.

§ 121.641 Fuel supply; nonturbine and turbo-propeller-powered airplanes: flag air carriers.

(a) No person may dispatch or take off a nonturbine or turbo-propeller-powered airplane unless, considering the wind and other weather conditions expected, it has enough fuel—

(1) To fly to and land at the airport to which it is dispatched;

(2) Thereafter, to fly to and land at the most distant alternate airport specified in the dispatch release; and

(3) Thereafter, to fly for 30 minutes plus 15 percent of the total time required to fly at normal cruising fuel consumption to the airports specified in subparagraphs (1) and (2) of this paragraph or to fly for 90 minutes at normal cruising fuel consumption, whichever is less.

(b) No person may dispatch a nonturbine or turbo-propeller-powered airplane to an airport for which an alternate is not specified under § 121.621(a)(2), unless it has enough fuel, considering wind and forecast weather conditions, to fly to that airport and thereafter to fly for three hours at normal cruising fuel consumption.

§ 121.643 Fuel supply: nonturbine and turbo-propeller-powered airplanes: supplemental air carriers and commercial operators.

(a) Except as provided in paragraph (b) of this section, no person may release for flight or takeoff a nonturbine or turbo-propeller-powered airplane unless, considering the wind and other weather conditions expected, it has enough fuel—

(1) To fly to and land at the airport to which it is released;

(2) Thereafter, to fly to and land at the most distant alternate airport specified in the flight release; and

(3) Thereafter, to fly for 45 minutes.

(b) If the airplane is released for any flight other than from one point in the contiguous United States to another point in the contiguous United States, it must carry enough fuel to meet the requirements of subparagraphs (1) and (2) of paragraph (a) of this section and thereafter fly for 30 minutes plus 15 percent of the total time required to fly at normal cruising fuel consumption to

the airports specified in subparagraphs (1) and (2) of paragraph (a) of this section, or to fly for 90 minutes at normal cruising fuel consumption, whichever is less.

(c) No person may release a nonturbine or turbo-propeller-powered airplane to an airport for which an alternate is not specified under § 121.623(b), unless it has enough fuel, considering wind and other weather conditions expected, to fly to that airport and thereafter to fly for three hours at normal cruising fuel consumption.

§ 121.645 Fuel supply; turbine-engine-powered airplanes, other than turbo propeller; Flag and supplemental air carriers and commercial operators.

(a) For any flag air carrier operation and for a supplemental air carrier or commercial operator operation outside the 48 contiguous States and the District of Columbia, no person may release for flight or take off a turbine-engine powered airplane (other than a turbo-propeller airplane) unless, considering wind and other weather conditions expected, it has enough fuel—

(1) To fly to and land at the airport to which it is released;

(2) Thereafter, to fly for a period of 10 percent of the total time required to fly from the airport of departure to, and land at, the airport to which it was released;

(3) Thereafter, to fly to and land at the most distant alternate airport specified in the flight release, if an alternate is required; and

(4) Thereafter, to fly for 30 minutes at holding speed at 1,500 feet above the alternate airport (or the destination airport if no alternate is required) under standard temperature conditions.

(b) No person may release a turbine-engine powered airplane (other than a turbo-propeller airplane) to an airport for which an alternate is not specified under § 121.621(a)(2) or 121.623(b) unless it has enough fuel, considering wind and other weather conditions expected, to fly to that airport and thereafter to fly for at least two hours at normal cruising fuel consumption.

(c) The Administrator may amend the operations specifications of a flag or supplemental air carrier or commercial operator to require more fuel than any of the minimums stated in paragraph (a) or (b) of this section if he finds that additional fuel is necessary on a particular route in the interest of safety.

§ 121.647 Factors for computing fuel required.

Each person computing fuel required for the purposes of this subpart shall consider the following:

(a) Wind and other weather conditions forecast.

(b) Anticipated traffic delays.

(c) One instrument approach and possible missed approach at destination.

(d) Any other conditions that may delay landing of the aircraft.

For the purposes of this section, required fuel is in addition to unusable fuel.

§ 121.649 Takeoff and landing weather minimums: VFR: domestic air carriers.

(a) Except as provided in paragraph (b) of this section, regardless of any clearance from ATC, no pilot may take-off or land an airplane under VFR when the reported ceiling or visibility is less than the following:

(1) For day operations—1,000-foot ceiling and one-mile visibility.

(2) For night operations—1,000-foot ceiling and two-mile visibility.

(b) Where a local surface restriction to visibility exists (e.g., smoke, dust, blowing snow or sand) the visibility for day and night operations may be reduced to ½ mile, if all turns after takeoff and prior to landing, and all flight beyond one mile from the airport boundary can be accomplished above or outside the area of local surface visibility restriction.

§ 121.651 Takeoff and landing weather minimums: IFR: domestic and flag air carriers.

(a) Regardless of any clearance from ATC, no pilot may take off an airplane under IFR if the ceiling or ground visibility reported by the U.S. Weather Bureau or a source approved by the Weather Bureau is less than that specified for the takeoff airport in Part 97 [New] of this chapter, or in the air carrier's operations specifications for the airport.

(b) Except as provided in paragraphs (c) and (d) of this section, no pilot may execute an instrument approach procedure or land under IFR at an airport if the latest U.S. Weather Bureau Report or a source approved by the Weather Bureau for that airport indicates that the ceiling or visibility is less than that prescribed by the Administrator for landing at that airport.

(c) A pilot may execute an instrument approach procedure if the U.S. Weather Bureau report or a source approved by the Weather Bureau indicates that the ceiling or visibility is less than the approved minimum for landing, if the airport is served by operative ILS and PAR and both are used by the pilot. Thereafter, the pilot may land if the pilot in command finds, upon reaching the authorized minimum landing altitude, that actual weather conditions are at least equal to the prescribed minimums.

(d) If a pilot initiates an instrument approach procedure when the current U.S. Weather Bureau report or a source approved by the Weather Bureau indicates that the prescribed ceiling and visibility minimums exist, and a later weather report indicating below minimum conditions is received after the airplane—

(1) Is on an ILS final approach and has passed the outer marker;

(2) Is on final approach using a radio range station or comparable facility, or a final approach fix, has passed the appropriate facility, or a final approach fix, and has reached the authorized minimum landing altitude; or

(3) Is on GCA final approach and has been turned over to the final approach controller;

the approach may be continued and a landing may be made, if the pilot in command finds, upon reaching the authorized landing minimum landing altitude, that actual weather conditions are at least equal to the prescribed minimums.

(e) If the pilot in command of an airplane has not served 100 hours as pilot in command in air carrier or commercial operations in the type of airplane he is operating, the ceiling and visibility landing minimums in the air carrier operations specifications for regular, provisional, or refueling airports are increased by 100 feet and one-half mile, respectively. The ceiling and visibility minimums need not be increased above those applicable to the airport when used as an alternate airport. The sliding scale when authorized in the operations specifications does not apply until the pilot in command has served 100 hours as pilot in command in air carrier or commercial operations in the type of airplane he is operating.

§ 121.653 Takeoff and landing weather minimums: IFR: supplemental air carriers and commercial operators.

(a) Regardless of any clearance from ATC, if the reported ceiling or ground visibility is less than that specified in the supplemental air carrier or commercial operator's operations specifications, no pilot may—

(1) Take off an aircraft under IFR; or

(2) Except as provided in paragraph (c) of this section, land an aircraft under IFR.

(b) Except as provided in paragraph (c) of this section, no pilot may execute an instrument approach procedure if the latest reported ceiling or visibility is less than the landing minimums specified in the air carrier or commercial operator's operations specifications.

(c) If a pilot initiates an instrument approach procedure when the latest weather report indicates that the specified ceiling and visibility minimums exist, and a later weather report indicating below minimum conditions is received after the airplane—

(1) Is on an ILS final approach and has passed the outer marker;

(2) Is on final approach using a radio range station or comparable facility, has passed the appropriate facility, and has reached the authorized minimum landing altitude; or

(3) Is on PAR final approach and has been turned over to the final approach controller;

the approach may be continued and a landing may be made, if the pilot in command finds, upon reaching the authorized landing minimum altitude, that actual weather conditions are at least equal to the minimums prescribed in the operations specifications.

(d) If the pilot in command of an airplane has not served 100 hours as pilot in command in operations under this part or in the type of aircraft he is operating, the ceiling and visibility landing minimums in the air carrier or commercial operator's operations specifications for airports are increased by 100 feet and one-half mile, respectively. The ceiling

and visibility minimums need not be increased above those applicable to the airport when used as an alternate airport.

§ 121.655 Applicability of reported weather minimums.

In conducting operations under §§ 121.649 through 121.653, the ceiling and visibility values in the main body of the latest weather report control for VFR and IFR takeoffs and landings and for instrument approach procedures on all runways of an airport. However, if the latest weather report, including an oral report from the control tower, contains a visibility value specified as runway visibility or runway visual range for a particular runway of an airport, that specified value controls for VFR and IFR landings and takeoffs and straight-in instrument approaches for that runway.

§ 121.657 Flight altitude rules.

(a) *General.* Notwithstanding § 91.79 or any rule applicable outside the United States, no person may operate an aircraft below the minimums set forth in paragraphs (b) and (c) of this section, except when necessary for takeoff or landing, or except when, after considering the character of the terrain, the quality and quantity of meteorological services, the navigational facilities available, and other flight conditions, the Administrator prescribes other minimums for any route or part of a route where he finds that the safe conduct of the flight requires other altitudes. Outside of the United States the minimums prescribed in this section are controlling unless higher minimums are prescribed in the air carrier or commercial operator's operations specifications or by the foreign country over which the aircraft is operating.

(b) *Day VFR operations.* No domestic air carrier may operate a passenger-carrying aircraft and no flag or supplemental air carrier or commercial operator may operate any aircraft under VFR during the day at an altitude less than 1,000 feet above the surface or less than 1,000 feet from any mountain, hill, or other obstruction to flight.

(c) *Night VFR, IFR, and over-the-top operations.* No person may operate an aircraft under IFR including over-the-top or at night under VFR at an altitude less than 1,000 feet above the highest obstacle within a horizontal distance of five miles from the center of the intended course, or, in designated mountainous areas, less than 2,000 feet above the highest obstacle within a horizontal distance of five miles from the center of the intended course. However, any person operating an aircraft under VFR at night in designated mountainous areas may operate over an approved lighted airway at a minimum altitude of 1,000 feet above such an obstacle. For supplemental air carriers and commercial operators adherence to a flight altitude is not required during the time a flight is operating in accordance with paragraph (d) of this section.

(d) *Day over-the-top operations below minimum en route altitudes: Domestic and supplemental air carriers and commercial operators.* A person may conduct day over-the-top operations in an airplane at flight altitudes lower than the minimum en route IFR altitudes if—

(1) The operation is conducted at least 1,000 feet above the top of lower broken or overcast cloud cover;

(2) The top of the lower cloud cover is generally uniform and level;

(3) Flight visibility is at least five miles; and

(4) The base of any higher broken or overcast cloud cover is generally uniform and level and is at least 1,000 feet above the minimum en route IFR altitude for that route segment.

§ 121.659 Initial approach altitude: domestic and supplemental air carriers and commercial operators.

(a) Except as provided in paragraph (b) of this section, when making an initial approach to a radio navigation facility under IFR, no person may descend an aircraft below the pertinent minimum altitude for initial approach (as specified in the instrument approach procedure for that facility) until his arrival over that facility has been definitely established.

(b) When making an initial approach on a flight being conducted under § 121.657(d), no pilot may commence an instrument approach until his arrival over the radio facility has definitely been established. In making an instrument approach under these circumstances no person may descend an aircraft lower than 1,000 feet above the top of the lower cloud or the minimum altitude determined by the Administrator for that part of the IFR approach, whichever is lower.

§ 121.661 Initial approach altitude: flag air carriers.

When making an initial approach to a radio navigation facility under IFR, no person may descend below the pertinent minimum altitude for initial approach (as specified in the instrument approach procedure for that facility) until his arrival over that facility has been definitely established.

§ 121.663 Responsibility for dispatch release: domestic and flag air carriers.

Each domestic and flag air carrier shall prepare a dispatch release for each flight between specified points, based on information furnished by an authorized aircraft dispatcher. The pilot in command and an authorized aircraft dispatcher shall sign the release only if they both believe that the flight can be made with safety. The aircraft dispatcher may delegate authority to sign a release for a particular flight, but he may not delegate his authority to dispatch.

§ 121.665 Load manifest.

Each certificate holder is responsible for the preparation and accuracy of a load manifest form before each takeoff. The form must be prepared and signed for each flight by employees of the certificate holder who have the duty of supervising the loading of aircraft and preparing the load manifest forms or by other qualified persons authorized by the certificate holder.

§ 121.667 Flight plan: VFR and IFR: supplemental air carriers and commercial operators.

(a) No person may take off an aircraft unless the pilot in command has filed a flight plan, containing the appropriate information required by Part 91 [New], with the nearest FAA communication station or appropriate military station or, when operating outside the United States, with other appropriate authority. However, if communications facilities are not readily available, the pilot in command shall file the flight plan as soon as practicable after the aircraft is airborne. A flight plan must continue in effect for all parts of the flight.

(b) When flights are operated into military airports, the arrival or completion notice required by § 91.83 may be filed with the appropriate airport control tower or aeronautical communication facility used for that airport.

Subpart V—Records and Reports

§ 121.681 Applicability.

This subpart prescribes requirements for the preparation and maintenance of records and reports for all certificate holders.

§ 121.683 Crewmember and dispatcher record.

(a) Each certificate holder shall—

(1) Maintain current records of each crewmember, and each aircraft dispatcher (domestic and flag air carriers only), that shows whether or not he complies with this chapter (e.g., proficiency and route checks, airplane and route qualifications, training, any required physical examinations, and flight time records); and

(2) Record each action taken concerning the release from employment or physical or professional disqualification of any flight crewmember or aircraft dispatcher (domestic and flag air carriers only) and keep the record for at least six months thereafter.

(b) Supplemental air carriers and commercial operators: Each supplemental air carrier and commercial operator shall maintain the records required by paragraph (a) of this section at its principal operations base, or at another location used by it and approved by the Administrator.

§ 121.685 Aircraft record: flag and domestic air carriers.

Each flag and domestic air carrier shall maintain a current list of each aircraft that it operates in scheduled air transportation and shall send a copy of the record and each change to the FAA Air Carrier District Office charged with the overall inspection of its operations. Airplanes of another air carrier operated under an interchange agreement may be incorporated by reference.

§ 121.687 Dispatch release: flag and domestic air carriers.

(a) The dispatch release may be in any form but must contain at least the following information concerning each flight:

(1) Identification number of the aircraft.
(2) Trip number.
(3) Departure airport, intermediate stops, destination airports, and alternate airports.
(4) A statement of the type of operation (e.g., IFR, VFR).
(5) Minimum fuel supply.

(b) The dispatch release must contain, or have attached to it, weather reports, available weather forecasts, or a combination thereof, for the destination airport, intermediate stops, and alternate airports, that are the latest available at the time the release is signed by the pilot in command and dispatcher. It may include any additional available weather reports or forecasts that the pilot in command or the aircraft dispatcher considers necessary or desirable.

§ 121.689 Flight release form: supplemental air carriers and commercial operators.

(a) Except as provided in paragraph (c) of this section, the flight release may be in any form but must contain at least the following information concerning each flight:
(1) Company or organization name.
(2) Make, model, and registration number of the aircraft being used.
(3) Flight or trip number, and date of flight.
(4) Name of each flight crewmember, flight attendant, and pilot designated as pilot in command.
(5) Departure airport, destination airports, alternate airports, and route.
(6) Minimum fuel supply (in gallons or pounds).
(7) A statement of the type of operation (e.g. IFR, VFR).

(b) The aircraft flight release must contain, or have attached to it, weather reports, available weather forecasts, or a combination thereof, for the destination airport, and alternate airports, that are the latest available at the time the release is signed. It may include any additional available weather reports or forecasts that the pilot in command considers necessary or desirable.

(c) Each flag or domestic air carrier operating under the rules of this part applicable to supplemental air carriers and commercial operators shall comply with the dispatch or flight release forms required for scheduled operations under this subpart.

§ 121.691 Load manifest: domestic and flag air carriers.

The load manifest must contain the following information concerning the loading of an aircraft at takeoff time:

(a) The weight of the aircraft, fuel and oil, cargo (including mail and baggage), and passengers.

(b) The maximum allowable weight for that flight.

(c) The total weight computed under approved procedures.

(d) Evidence that the aircraft is loaded according to an approved schedule that insures that the center of gravity is within approved limits.

§ 121.693 Load manifest: supplemental air carriers and commercial operators.

The load manifest must contain the following information concerning the airplane at takeoff time:

(a) The weight of the aircraft, fuel and oil, cargo and baggage, passengers, and crewmembers.

(b) The maximum allowable weight for that flight that must not exceed the least of the following weights:

(1) Maximum allowable takeoff weight for the runway intended to be used (including corrections for altitude and gradient, and wind and temperature conditions existing at the takeoff time).

(2) Maximum takeoff weight considering anticipated fuel and oil consumption that allows compliance with applicable en route performance limitations.

(3) Maximum takeoff weight considering anticipated fuel and oil consumption that allows compliance with the maximum authorized design landing weight limitations on arrival at the destination airport.

(4) Maximum takeoff weight considering anticipated fuel and oil consumption that allows compliance with landing distance limitations on arrival at the destination and alternate airports.

(c) The total weight computed under approved procedures.

(d) Evidence that the aircraft is loaded according to an approved schedule that insures that the center of gravity is within approved limits.

(e) Names of passengers.

§ 121.695 Disposition of load manifest, dispatch release, and flight plans: domestic and flag air carriers.

(a) The pilot in command of an aircraft shall carry in the airplane to its destination—

(1) A copy of the completed load manifest (or information from it, except information concerning cargo and passenger distribution);

(2) A copy of the dispatch release; and

(3) A copy of the flight plan.

(b) The air carrier shall keep copies of the records required in this section for at least three months.

§ 121.697 Disposition of load manifest, flight release, and flight plans: supplemental air carriers and commercial operators.

(a) The pilot in command of an aircraft shall carry in the airplane to its destination the original or a signed copy of the—

(1) Load manifest;
(2) Flight release;
(3) Airworthiness release;
(4) Pilot route certification; and
(5) Flight plan.

(b) If a flight originates at the principal operations base of the air carrier or commercial operator, it shall retain at that base a signed copy of each document listed in paragraph (a) of this section.

(c) If a flight originates at a place other than the principal operations base, the pilot in command (or other person authorized by the carrier or operator) shall, before or immediately after departure of the flight, mail signed copies of the documents listed in paragraph (a) of this section to the principal operations base.

(d) The supplemental air carrier or commercial operator shall keep at its operations base either the original or a copy of the records required in this section for at least six months.

§ 121.699 Maintenance records.

(a) Each certificate holder shall keep, at its principal maintenance base, current records of total time in service, time since last overhaul, and time since last inspection, for each major component of each airframe, aircraft engine, propeller, and, where practicable, appliance.

(b) A certificate holder may discontinue total time in service records if it shows that the service life of component parts is safely controlled by inspection, overhaul, or parts retirement procedures. The Administrator may require the keeping of total time in service records for a part when he finds that other procedures will not safely limit the service life of that part.

(c) An aircraft component, aircraft engine, propeller, or appliance for which complete records required by this section are not available may be placed in service if—

(1) It is of a type for which total time inservice records are not required by paragraph (b) of this section;

(2) Parts that the Administrator or manufacturer limits to a specific total time in service are retired and replaced by new parts; or

(3) It has been properly overhauled or rebuilt and the overhaul or rebuilding is recorded in the maintenance records.

§ 121.701 Maintenance log: aircraft.

(a) Each person who takes action in the case of a reported or observed failure or malfunction of an airframe, engine, propeller, or appliance that is critical to the safety of flight shall make, or have made, a record of that action in the airplane's maintenance log.

(b) Each certificate holder shall have an approved procedure for keeping adequate copies of the record required in paragraph (a) of this section in the airplane in a place readily accessible to each flight crewmember and shall put that procedure in the certificate holder's manual.

§ 121.703 Mechanical reliability reports.

(a) Each certificate holder shall report the occurrence or detection of each failure, malfunction, or defect concerning—

(1) Fires during flight and whether the related fire-warning system functioned properly;

(2) Fires during flight not protected by a related fire-warning system;

(3) False fire warning during flight;

(4) An engine exhaust system that causes damage during flight to the engine, adjacent structure, equipment, or components;

(5) An aircraft component that causes accumulation or circulation of smoke, vapor, or toxic or noxious fumes in the crew compartment or passenger cabin during flight;

(6) Engine shutdown during flight because of flameout;

(7) Engine shutdown during flight when external damage to the engine or airplane structure occurs;

(8) Engine shutdown during flight due to foreign object ingestion or icing;

(9) Engine shutdown during flight of more than one engine;

(10) A propeller feathering system or ability of the system to control overspeed during flight;

(11) A fuel or fuel-dumping system that affects fuel flow or causes hazardous leakage during flight;

(12) A landing gear extension or retraction or opening or closing of landing gear doors during flight;

(13) Brake system components that result in loss of brake actuating force when the airplane is in motion on the ground;

(14) Aircraft structure that requires major repair;

(15) Cracks, permanent deformation, or corrosion of aircraft structures, if more than the maximum acceptable to the manufacturer or the FAA; and

(16) Aircraft components or systems that result in taking emergency actions during flight (except action to shutdown an engine).

(b) For the purpose of this section "during flight" means the period from the moment the aircraft leaves the surface of the earth on takeoff until it touches down on landing.

(c) In addition to the reports required by paragraph (a) of this section, each certificate holder shall report any other failure, malfunction, or defect in an aircraft that occurs or is detected at any time if, in its opinion, that failure, malfunction, or defect has endangered or may endanger the safe operation of an aircraft used by it.

(d) Each certificate holder shall send each report required by this section, in writing, covering each 24-hour period beginning at 0900 hours local time of each day and ending at 0900 hours local time on the next day, to the FAA maintenance inspector assigned to its operations. The report must be delivered to him by 0900 hours local time on the following day. However, a report that is due on Saturday or Sunday may be delivered on the following Monday and one that is due on a holiday may be delivered on the next workday.

(e) The certificate holder shall transmit the reports required by this section in a manner and on a form that is convenient to its system of communication and procedure, and shall include in the first daily report as much of the following as is available:

(1) Type and identification number of the aircraft.

(2) The name of the operator.

(3) The date, flight number, and stage during which the incident occurred (e.g., preflight, takeoff, climb, cruise, descent, landing, and inspection).

(4) The emergency procedure effected (e.g., unscheduled landing and emergency descent).

(5) The nature of the failure, malfunction, or defect.

(6) Identification of the part and system involved, including available information pertaining to type designation of the major component and time since overhaul.

(7) Apparent cause of the failure, malfunction, or defect (e.g., wear, crack, design deficiency, or personnel error).

(8) Whether the part was repaired, replaced, sent to the manufacturer, or other action taken.

(9) Whether the aircraft was grounded.

(10) Other pertinent information necessary for more complete identification, determination of seriousness, or corrective action.

(f) Failures, malfunctions, or defects reported under the accident reporting provisions of Part 320 of the regulations of the Civil Aeronautics Board need not be reported under this section.

(g) No person may withhold a report required by this section even though all information required in this section is not available.

(h) When certificate holder gets additional information, including information from the manufacturer or other agency, concerning a report required by this section, it shall expeditiously submit it as a supplement to the first report and reference the date and place of submission of the first report.

§ 121.705 Mechanical interruption summary report.

Each certificate holder shall regularly and promptly send a summary report on the following occurrences to the Administrator:

(a) Each interruption to a scheduled flight, unscheduled change of aircraft en route, or unscheduled stop or diversion from a route, caused by known or suspected mechanical difficulties or malfunctions that are not required to be reported under § 121.703.

(b) The number of engines removed prematurely because of malfunction, failure or defect, listed by make and model and the aircraft type in which it was installed.

(c) The number of propeller featherings in flight, listed by type of propeller and engine and aircraft on which it was installed. Propeller featherings for training, demonstration, or flight check purposes need not be reported.

§ 121.707 Alteration and repair reports.

(a) Each certificate holder shall, promptly upon its completion, prepare a report of each major alteration or major repair of an airframe, aircraft engine, propeller, or appliance of an aircraft operated by it.

(b) The certificate holder shall submit a copy of each report of a major alteration to, and shall keep a copy of each report of a major repair available for inspection by, the representative of the Administrator who is assigned to it.

§ 121.709 Airworthiness release or aircraft log entry.

(a) No certificate holder may operate an aircraft after maintenance, preventive maintenance or alterations are performed on the aircraft unless the certificate holder, or the person with whom the certificate holder arranges for the performance of the maintenance, preventive maintenance, or alterations, prepares or causes to be prepared—

(1) An airworthiness release; or

(2) An appropriate entry in the aircraft log.

(b) The airworthiness release or log entry required by paragraph (a) of this section must—

(1) Be prepared in accordance with the procedures set forth in the certificate holder's manual;

(2) Include a certification that—

(i) The work was performed in accordance with the requirements of the certificate holder's manual;

(ii) All items required to be inspected were inspected by an authorized person who determined that the work was satisfactorily completed;

(iii) No known condition exists that would make the airplane unairworthy; and

(iv) So far as the work performed is concerned, the aircraft is in condition for safe operation; and

(3) Be signed by an authorized certificated mechanic or repairman except that a certificated repairman may sign the release or entry only for the work for which he is employed and certificated.

(c) When an airworthiness release form is prepared the certificate holder must give a copy to the pilot in command and must keep a record thereof for at least two months.

§ 121.711 Communication records: domestic and flag air carriers.

Each domestic and flag air carrier shall record each en route radio contact between the air carrier and its pilots and shall keep that record for at least 30 days.

§ 121.713 Retention of contracts and amendments: commercial operator.

Each commercial operator shall keep a copy of each written contract under which it provides services as a commercial operator for a period of at least one year after the date of execution of the contract. In the case of an oral contract, it shall keep a memorandum stating its elements, and of any amendments to it, for a period of at least one year after the execution of that contract or change.

Subpart W—Crewmember Certificate; International

§ 121.721 Applicability.

This subpart describes the certificates that are issued to United States citizens who are employed by air carriers or commercial operators as flight crewmembers or crewmembers on United States registered aircraft engaged in international air commerce. The purpose of the certificate is to facilitate the entry and clearance of those crew members into ICAO contracting states. They are issued under Annex 9, as amended, to the Convention on International Civil Aviation.

§ 121.723 Application and issue.

(a) An application for a crewmember certificate is made on Form FAA-2116 "Application for Crewmember Certificate", to the Air Carrier District Office in charge of the air carrier or commer-

cial operator by whom the applicant is employed. The certificate is issued on Form FAA–2116.1 "Crewmember Certificate".

(b) The holder of a certificate issued under this subpart, or the air carrier or commercial operator by whom he is employed, shall surrender the certificate for cancellation at the nearest Air Carrier District Office at the end of the holder's assignment in international air commerce with that carrier or operator.

NOTE: The record keeping and reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

DISTRIBUTION TABLE

Former section	Revised section
40.1 (less 2d proviso)	121.1
40.1 (2d proviso)	121.3
40.2	121.11
40.5	[1]
40.10	121.3
40.11	121.25
40.12	[3]
40.12–1	[3]
40.13 (less (c))	121.27
40.13(c)	121.3
40.14	121.77
40.15	121.73
40.16	121.29
40.17	[2]
40.18	121.3
40.18–1	[3]
40.18–2	[3]
40.18–3	[3]
40.18–4	[3]
40.19	121.25
40.19–1	[3]
40.19–2	[3]
40.20	121.75
40.21	121.79
40.22	121.81
40.23	121.83
40.30	121.93
40.30–1	[3]
40.30–2	[3]
40.32	121.95
40.33	121.97
40.33–1	[3]
40.34	121.99
40.34–1	[3]
40.35	121.101
40.36	121.103
40.37	121.105
40.37–1	[3]
40.38	121.107
40.50	121.133
40.51	121.135
40.51–1	[3]
40.51–2	[3]
40.52	121.137
40.53	121.141
40.60	121.153
40.61	121.157
40.62 (1st sentence)	121.159
40.62 (less 1st sentence)	121.161
40.63	121.163
40.63–1	[3]
40.70	121.173
40.70–1	[3]
40.70–2	[3]
40.70–3	[3]
40.71	121.175
40.71–1	[3]
40.72	121.177
40.72–1	[3]
40.73	121.179
40.74	121.181
40.75	121.183
40.76	121.173

[1] Transferred to Part 1 [New].
[2] Surplusage.
[3] Not a rule.

DISTRIBUTION TABLE—Continued

Former section	Revised section
40.76–1	[3]
40.77	121.185
40.77–1	[3]
40.78	121.187
40.90	121.176
40.90–1	[3]
40.91	121.199
40.91–1	[3]
40.91–2	[3]
40.92	121.201
40.92–1	[3]
40.93	121.203
40.93–1	[3]
40.93–2	[3]
40.94	121.205
40.94–1	[3]
40.110	121.213
40.111	[2]
40.112	121.215
40.113	121.217
40.114	121.219
40.115	121.221
40.116	121.223
40.117	121.225
40.118	121.227
40.119	121.229
40.120	121.231
40.121	121.233
40.122	121.235
40.123	121.237
40.124	121.239
40.125	121.241
40.126	121.243
40.127	121.245
40.128	121.247
40.129	121.249
40.130	121.251
40.131	121.253
40.132	121.255
40.133	121.257
40.134	121.259
40.135	121.261
40.136	121.263
40.137	121.265
40.138	121.267
40.139	121.269
40.140	121.271
40.141	121.273
40.142	121.275
40.143	121.277
40.150	121.279
40.151	121.281
40.152	121.283
40.153	121.285
40.154	121.287
40.155	121.289
40.170	121.303
40.170–1	[3]
40.170–2	[3]
40.170–3	[3]
40.171	121.305
40.172	121.307
40.172–1	[3]
40.173	121.309
40.173–1	[3]
40.174	121.311
40.175 (less (g))	121.313
40.175(g)	[4]
40.175–1(a)	121.313
40.175–1 (less (a))	[3]
40.176	121.315
40.177	121.317
40.178	121.319
40.179	121.321
40.200	121.323
40.201	121.325
40.202	121.327
40.202–1	[3]
40.202–2	[3]
40.202–3	[3]
40.202–4	[3]
40.202–5	[3]
40.202–6	[3]
40.202–T	121.329
40.203	121.331

[4] Obsolete.

DISTRIBUTION TABLE—Continued

Former section	Revised section
40.203–1	[3]
40.203–2	[3]
40.203–3	[3]
40.203–4	[3]
40.203–T	121.333
40.204	121.335
40.205	121.337
40.205–1	121.337
40.205–2	[3]
40.206	121.339
40.207	121.341
40.208	121.343
40.212	121.359
40.230	121.345
40.230–1	[3]
40.231	121.347
40.232	121.349
40.232–1	[3]
40.233	121.351
40.240	121.361
40.241 (less (a))	121.363
40.241(a)	121.367
40.241–1	[3]
40.242	121.369
40.243	121.371
40.260	121.383
40.261	121.385
40.263	121.387
40.265	121.391
40.266	121.395
40.267	121.396
40.280	121.411
40.281	121.413
40.282	121.415
40.284	121.421
40.286	121.423
40.286–1	[3]
40.288	121.425
40.289(c)	121.411
40.289 (less (c)) (as applicable to pilot ground training)	121.413
40.289 (less (c)) (as applicable to pilot flight training)	121.415
40.289 (less (c)) (as applicable to flight engineer training)	121.421
40.289 (less (c)) (as applicable to crewmember emergency training)	121.423
40.289 (less (c)) (as applicable to aircraft dispatcher training)	121.425
40.290	121.411
40.300(a) (portion of 1st sentence)	121.463
40.300(a) (less portion of 1st sentence) and (b)	121.433
40.300 (less 1st sentence of (a) and less (b))	121.437
40.301	121.439
40.302	121.441
40.302–1	[3]
40.302–2	[3]
40.302–3	[3]
40.302–4	[3]
40.303	121.443
40.303–1	[3]
40.304	121.447
40.305	121.449
40.307	121.453
40.307–1	[3]
40.310	121.463
40.320	121.471
40.340	121.465
40.351	121.533
40.352	121.539
40.353	121.541
40.354	121.543
40.355	121.545
40.355–1	[3]
40.356	121.547
40.356–1	[3]
40.357	121.549
40.358	121.551
40.359	121.555
40.360	121.557
40.361	121.561

[2] Surplusage.
[3] Not a rule.
[4] Obsolete.

DISTRIBUTION TABLE—Continued

Former section	Revised section
40.362	121.563
40.363	121.565
40.364	121.567
40.365	121.569
40.370	121.571
40.371	121.575
40.372	121.579
40.373	121.587
40.381	121.593
40.382	121.599
40.383	121.601
40.384	121.605
40.385	121.607
40.386	121.611
40.387	121.613
40.388	121.617
40.389	121.619
40.390	121.625
40.390–1	(2)
40.390–2	(2)
40.390–3	(2)
40.391	121.627
40.391–1	(2)
40.392	121.629
40.393	121.631
40.394	121.633
40.395	121.637
40.396	121.639
40.397	121.647
40.405	121.649
40.405–1	(2)
40.406	121.651
40.406–1	(2)
40.406–2	(2)
40.406–3	(2)
40.407	121.655
40.408	121.657
40.409	121.659
40.411	121.663
40.412	121.665
40.501	121.683
40.501–1	(2)
40.502	121.685
40.503	121.687
40.503–1	(2)
40.504 (less (b))	121.691
40.504(b)	121.665
40.505	121.695
40.506	121.699
40.507	121.701
40.508	121.703
40.509	121.705
40.510	121.707
40.511	121.709
40.511–1	(2)
40.512	121.711
41.1	121.1
41.2	121.11
41.5	(1)
41.10	121.3
41.11	121.25
41.13	121.27
41.13(c)	121.3
41.14	121.77
41.15	121.73
41.16	121.29
41.18(b)	121.3
41.18 (less (b))	121.23
41.19	121.25
41.20	121.75
41.21	121.79
41.22	121.81
41.23	121.83
41.30	121.93
41.32	121.95
41.33	121.97
41.34	121.99
41.35	121.101
41.36	121.103
41.36 (note)	121.103
41.37	121.105
41.38	121.107
41.50	121.133
41.51	121.135
41.52	121.137
41.53	121.141

[1] Transferred to Part 1 [New].

DISTRIBUTION TABLE—Continued

Former section	Revised section
41.60	121.153
41.61	121.157
41.62 (1st sentence)	121.159
41.62 (less 1st sentence)	121.161
41.63	121.163
41.70	121.173
41.71	121.175
41.72	121.177
41.73	121.179
41.74	121.181
41.75	121.183
41.76	121.173
41.77	121.185
41.78	121.187
41.90	121.173
41.91	121.199
41.92	121.201
41.93	121.203
41.94	121.205
41.110	121.213
41.112	121.215
41.113	121.217
41.114	121.219
41.115	121.221
41.116	121.223
41.117	121.225
41.118	121.227
41.119	121.229
41.120	121.231
41.121	121.233
41.122	121.235
41.123	121.237
41.124	121.239
41.125	121.241
41.126	121.243
41.127	121.245
41.128	121.247
41.129	121.249
41.130	131.251
41.131	121.253
41.132	121.255
41.133	121.257
41.134	121.259
41.135	121.261
41.136	121.263
41.137	121.265
41.138	121.267
41.139	121.269
41.140	121.271
41.141	121.273
41.142	121.275
41.143	121.277
41.150	121.279
41.151	121.281
41.152	121.283
41.153	121.285
41.154	121.287
41.155	121.289
41.170	121.303
41.171	121.305
41.172	121.307
41.173	121.309
41.174	121.311
41.175	121.313
41.176	121.315
41.177	121.317
41.178	121.319
41.179	121.321
41.200	121.323
41.201	121.325
41.202	121.327
41.202–T	121.329
41.203	121.331
41.203–T	121.333
41.204	121.335
41.205	121.337
41.206	121.339
41.207	121.341
41.208	121.353
41.209	121.355
41.210	121.343
41.212	121.359
41.230	121.345
41.231	121.347
41.232	121.349
41.233	121.351
41.240	121.361

DISTRIBUTION TABLE—Continued

Former section	Revised section
41.241(a) (1st sentence)	121.367
41.241 (less 1st sentence of (a))	121.365
41.242	121.369
41.243	121.371
41.260	121.383
41.261	121.385
41.262	121.389
41.263	121.387
41.265	121.393
41.266	121.395
41.267	121.397
41.280	121.411
41.281	121.413
41.282	121.415
41.283	121.417
41.284	121.421
41.285	121.423
41.286	121.425
41.300(a) (portion of 1st sentence)	121.463
41.300(a) (less portion of 1st sentence) and (b)	121.433
41.300 (less 1st sentence of (a) and (b))	121.437
41.301	121.439
41.302	121.441
41.303	121.443
41.304	121.447
41.305	121.449
41.306	121.451
41.307	121.453
41.310	121.463
41.320	121.481
41.321	121.483
41.322	121.485
41.323	121.487
41.324	121.491
41.325	121.489
41.326	121.493
41.327	121.493
41.340	121.465
41.351	121.535
41.352	121.539
41.353	121.541
41.354	121.543
41.355	121.545
41.356	121.547
41.357	121.549
41.358	121.551
41.359	121.555
41.360	121.557
41.361	121.561
41.362	121.563
41.363	121.565
41.364	121.567
41.365	121.569
41.370	121.571
41.371	121.575
41.372	121.579
41.373	121.587
41.381	121.595
41.382	121.599
41.383	121.601
41.384	121.605
41.385	121.607
41.386	121.611
41.387(a) (1st 56 words)	121.613
41.387 (less (a) 1st 56 words)	121.615
41.388	121.617
41.389	121.621
41.390	121.625
41.391	121.627
41.392	121.629
41.393	121.631
41.394	121.635
41.395	121.637
41.396(a)	121.641
41.396 (less (a))	121.645
41.397	121.647
41.406	121.651
41.407	121.655
41.408	121.657
41.409	121.661
41.410	121.663
41.411	121.665
41.501	121.683
41.502	121.685
41.503	121.687

DISTRIBUTION TABLE—Continued

Former section	*Revised section*
41.504(b)	121.665
41.504 (less (b))	121.691
41.505	121.695
41.506	121.699
41.507	121.701
41.508	121.703
41.509	121.705
41.510	121.707
41.511	121.709
41.512	121.711
42.1(a)(4)	121.7
42.1 (less (a)(4))	121.1
42.2	121.7
42.5	[1]
42.10	121.3
42.11	121.45
42.12	121.47
42.13	121.49
42.14	121.51
42.15	121.55
42.16	121.77
42.17	121.73
42.17a	121.53
42.18(b)	121.3
42.18 (less (b))	121.43
42.19	121.45
42.20	121.75
42.21	121.79
42.22	121.81
42.23	121.83
42.24(c)	121.3
42.24 (less (c))	121.5
42.25	121.57
42.26	121.13
42.27	121.59
42.28	121.61
42.29	121.9
42.30	121.113
42.31	121.115
42.33	121.117
42.35	121.119
42.36	121.121
42.37	121.123
42.38	121.125
42.39	121.127
42.50	121.133
42.51	121.135
42.52(b)	121.139
42.52 (less (b))	121.137
42.53	121.141
42.60(c)–(f)	121.155
42.60 (less (c)–(f))	121.153
42.61	121.157
42.62 (1st sentence)	121.159
42.62 (less 1st sentence)	121.161
42.63	121.163
42.70	121.173
42.71	121.175
42.72	121.177
42.73	121.179
42.74	121.181
42.75	121.183
42.76	121.173
42.77	121.185
42.78	121.187
42.90	121.173
42.91	121.199
42.92	121.201
42.93	121.203
42.94	121.205
42.110	121.213
42.111	[2]
42.112	121.215
42.113	121.217
42.114	121.219
42.115	121.221
42.116	121.223
42.117	121.225
42.118	121.227
42.119	121.229
42.120	121.231
42.121	121.233
42.122	121.235
42.123	121.237

[1] Transferred to Part 1 [New].
[2] Surplusage.

DISTRIBUTION TABLE—Continued

Former section	*Revised section*
42.124	121.239
42.125	121.241
42.126	121.243
42.127	121.245
42.128	121.247
42.129	121.249
42.130	121.251
42.131	121.253
42.132	121.255
42.133	121.257
42.134	121.259
42.135	121.261
42.136	121.263
42.137	121.265
42.138	121.267
42.139	121.269
42.140	121.271
42.141	121.273
42.142	121.275
42.143	121.277
42.150	121.279
42.151	121.281
42.152	121.283
42.153	121.285
42.154	121.287
42.155	121.289
42.170	121.303
42.171	121.305
42.172	121.307
42.173	121.309
42.174	121.311
42.175	121.313
42.176	121.315
42.177	121.317
42.178	121.319
42.179	121.321
42.200	121.323
42.201	121.325
42.202	121.327
42.202–T	121.329
42.203	121.331
42.203–T	121.333
42.204	121.335
42.205	121.337
42.206	121.339
42.207	121.341
42.208	121.353
42.209	121.355
42.210	121.343
42.212	121.359
42.230	121.345
42.231	121.347
42.232	121.349
42.233	121.351
42.240	121.361
42.241(a) (1st sentence)	121.367
42.241 (less 1st sentence of (a))	121.365
42.242	121.369
42.243	121.371
42.260	121.383
42.261	121.385
42.262	121.389
42.263	121.387
42.265	121.393
42.267	121.397
42.280	121.411
42.281	121.413
42.282	121.415
42.283	121.419
42.284	121.421
42.285	121.423
42.300(a) (1st 37 words of 1st sentence) and (b)	121.433
42.300(a) (1st sentence less 1st 37 words)	121.435
42.300 (less 1st sentence of (a) and less (b))	121.437
42.301	121.439
42.302	121.441
42.303	121.445
42.305	121.449
42.306	121.451
42.307	121.453
42.315	121.501
42.317(a) (less (6) and (7))	121.503
42.317(b)	121.505
42.317(c)	121.507

DISTRIBUTION TABLE—Continued

Former section	*Revised section*
42.317(a)(6)	121.517
42.317(a)(7)	121.519
42.317 (less (a), (b), and (c))	121.509
42.318	121.511
42.319	121.513
42.320(a)	121.515
42.320(b)	121.519
42.320 (less (a) and (b))	121.517
42.321	121.521
42.322	121.523
42.323	121.525
42.350	121.537
42.352	121.537
42.353	121.539
42.354	121.543
42.355	121.545
42.356	121.547
42.357	121.549
42.358	121.553
42.360	121.559
42.361	121.561
42.362	121.563
42.363	121.565
42.364	121.567
42.370(a)	121.573
42.370 (less (a))	121.571
42.371	121.575
42.372	121.579
42.373	121.587
42.381	121.597
42.382	121.599
42.383	121.603
42.384	121.605
42.385	121.609
42.386	121.611
42.387(a) (1st 56 words)	121.613
42.387 (less (a) 1st 56 words)	121.615
42.388	121.617
42.389	121.623
42.390	121.625
42.391	121.627
42.392	121.629
42.393	121.631
42.396(a)	121.643
42.396 (less (a))	121.645
42.397	121.647
42.406	121.653
42.407	121.655
42.408	121.657
42.409	121.659
42.411	121.665
42.412	121.667
42.501	121.683
42.503	121.689
42.504(b)	121.665
42.504 (less (b))	121.693
42.505	121.697
42.506	121.699
42.507	121.701
42.508	121.703
42.509	121.705
42.510	121.707
42.511	121.709
42.513	121.713
SR 386F	121.487
SR 389B	Transferred to Part 91
SR 405	121.471
SR 406C	121.157
SR 410	121.503
SR 411B (less applicability to foreign air carriers)	121.198
SR 420	121.309
SR 422 § 40T.80	121.173
SR 422 § 40T.81 (less (b) and (d))	121.189
SR 422 § 40T.81(b)	121.195
SR 422 § 40T.81(d)	121.173
SR 422 § 40T.82	121.189
SR 422 § 40T.83(a)	121.191
SR 422 § 40T.83 (less (a))	121.193
SR 422 § 40T.84(a)	121.195
SR 422 § 40T.84 (less (a))	121.197
SR 422A § 40T.80	121.173
SR 422A § 40T.81 (less (b) and (d))	121.189
SR 422A § 40T.81(b)	121.195
SR 422A § 40T.81(d)	121.173
SR 422A § 40T.82	121.189
SR 422A § 40T.83(a)	121.191

Former section	Revised section
SR 422 § 40T.83 (less (a))	121.193
SR 422A § 40T.84(a)	121.195
SR 422A § 40T.84 (less (a))	121.197
SR 422B 40T.80	121.173
SR 422B § 40T.81 (less (b) and (d))	121.189
SR 422B § 40T.81(b)	121.195
SR 422B § 40T.81(d)	121.173
SR 422B § 40T.82	121.189
SR 422B § 40T.83(a)	121.193
SR 422B § 40T.83 (less (a))	121.191
SR 422B § 40T.84(a)	121.195
SR 422B § 40T.84 (less (a))	121.197
SR 425C § 14	121.207
SR 432A	121.583
SR 436B	121.357
SR 440	121.587
SR 448A	121.585
SR 455	121.548
406.19(a)	121.721
406.19 (less (a))	121.723

Appendix A—First-Aid Kits

Appendix B—Minimum Standards for the Approval of Airplane Simulators

Appendix C—C–46 Nontransport Category Airplanes

NOTE: Text of Appendixes A, B, and C to Part 121 will be published in the FEDERAL REGISTER early in January 1965.

[F.R. Doc. 64–13424; Filed, Dec. 30, 1964; 8:45 a.m.]

Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 730—RICE

Subpart—1965–66 Marketing Year

PROCLAMATIONS AND DETERMINATIONS WITH RESPECT TO MARKETING QUOTAS AND NATIONAL ACREAGE ALLOTMENT FOR 1965 CROP RICE, AND APPORTIONMENT OF 1965 NATIONAL ACREAGE ALLOTMENT OF RICE AMONG THE SEVERAL STATES

Sec.

AUTHORITY: The provisions of this subpart issued under secs. 301, 352, 353, 354, 375, 52 Stat. 38, 60, 61, 66, as amended; 7 U.S.C. 1301, 1352, 1353, 1354, 1375.

§ 730.1601 Basis and purpose.

(a) (1) Section 730.1602 is issued under and in accordance with sections 301 and 354 of the Agricultural Adjustment Act of 1938, as amended, to proclaim the total supply and normal supply of rice for the marketing year beginning August 1, 1964, and to proclaim that marketing quotas will be applicable to the 1965 crop of rice. Section 730.1603 is issued under and in accordance with sections 352 and 353 of the Agricultural Adjustment Act of 1938, as amended, to proclaim the national acreage allotment of rice for the calendar year 1965. Section 353(c)(6) of the act, as amended by section 301 of Public Law 85–835, 72 Stat. 994, provides that the national acreage allotment of rice for 1965 shall be not less than the total acreage allotted in 1956.

(2) Section 730.1604 is issued under and in accordance with section 353 of the Agricultural Adjustment Act of 1938, as amended, to apportion among the several States the national acreage allotment of rice for 1965 as proclaimed in § 730.1603 hereof. Section 353 of the act provides that the national acreage allotment of rice for 1965, less a reserve of not to exceed one per centum for apportionment to farms receiving inadequate allotments, shall be apportioned among the States in the same proportion that they shared in the total acreage allotted in 1956.

(3) Section 353(b) of the act, as amended by Public Law 85–443, authorizes the Secretary of Agriculture under certain circumstances to divide any State into two administrative areas to be designated "producer administrative area" and "farm administrative area", and provides that if any State is so divided into administrative areas the term "State acreage allotment" for the purposes of section 353 of the Agricultural Adjustment Act of 1938, as amended, shall be deemed to mean that part of the State acreage allotment apportioned to each administrative area.

(4) Section 353(c)(1) of the act, as amended by Public Law 85–443, provides that if any State is divided into administrative areas, the allotment for each area shall be determined by apportioning the State acreage allotment among counties as provided in section 353(c)(1) of the Agricultural Adjustment Act of 1938, as amended, and totaling the allotments for the counties in each such area. The acreage allotments for the "farm administrative area" and "producer administrative area" in the State of Louisiana which are set out in § 730.1604 were determined by apportioning the State acreage allotment for Louisiana among the counties in the State in the same proportion which each such county shared in the total acreage allotted in the State in 1956, as provided in section 353(c)(1) of the Agricultural Adjustment Act of 1938, as amended, and totaling the allotments for the counties in each such area.

(b) The findings and determinations made in §§ 730.1602, 730.1603, and 730.1604 have been made on the basis of the latest available statistics of the Federal Government. The findings in § 730.1602 show that marketing quotas are required for the 1965 crop of rice. The determinations made in § 730.1603 indicate the amount of the 1965 national acreage allotment of rice.

(c) Prior to taking action herein, public notice (29 F.R. 13273) was given in accordance with the Administrative Procedure Act (5 U.S.C. 1003), that the Secretary was preparing to determine whether marketing quotas are required for the 1965 crop of rice, to determine and proclaim the national acreage allotment of rice for 1965, and to apportion among the States the 1965 national acreage allotment of rice. No data, views, and recommendations were submitted pursuant to such notice.

(d) The Agricultural Adjustment Act of 1938, as amended, requires that the proclamation with respect to marketing quotas for the 1965 crop of rice be issued not later than December 31, 1964; that the referendum to determine whether farmers are in favor of or opposed to such quotas be held within 30 days after the issuance of the proclamation; and that insofar as practicable operators of farms be notified of their farm rice acreage allotments prior to the holding of the referendum. Therefore, it is necessary to waive the 30-day effective date provision of section 4 of the Administrative Procedure Act and such provision is hereby waived. Accordingly, the regulations in §§ 730.1601 to 730.1604, inclusive, shall become effective upon filing with the Director, Office of the Federal Register.

§ 730.1602 Marketing quotas on 1965 crop of rice.

The total supply of rice in the United States for the marketing year beginning August 1, 1964, is determined to be 80,700 thousand hundredweight (rough basis). The normal supply of rice for such marketing year is determined to be 77,759 thousand hundredweight. Since the total supply of rice for the 1964–65 marketing year exceeds the normal supply for such marketing year, marketing quotas shall be in effect on the 1965 crop of rice.

§ 730.1603 National acreage allotment of rice for 1965.

The normal supply of rice for the marketing year commencing August 1, 1965, is determined to be 76,835 thousand hundredweight (rough basis). The carryover of rice on August 1, 1965, is determined to be 9,800 thousand hundredweight. Therefore, the production of rice needed in 1965 to make available a total supply of rice for the 1965–66 marketing year equal to the normal supply for such marketing year is 67,035 thousand hundredweight. The national average yield of rice for the five calendar years, 1960 through 1964 is determined to be 3,686 pounds per planted acre. The national acreage allotment of rice for 1965 computed on the basis of the production of rice needed in 1965 and the national average yield per planted acre of rice for the five calendar years, 1960 through 1964, is 1,818,638 acres. Since this amount is more than the total acreage allotted in 1956, which is the minimum for 1965 provided by law, the national acreage allotment of rice for the calendar year 1965 shall be 1,818,638 acres.

§ 730.1604 Apportionment of 1965 national acreage allotment of rice among the several States.

The national acreage allotment proclaimed in § 730.1603, less a reserve of 672 acres, is hereby apportioned among the several rice-producing States as follows:

State:	Acres
Arizona	252
Arkansas	439,019
California	329,822
Florida	1,053
Illinois	22
Louisiana:	
Farm administrative area 503,984	
Producer administrative area 18,651	
State total	522,635
Mississippi	51,354
Missouri	5,245
North Carolina	42
Oklahoma	164
South Carolina	3,132
Tennessee	569
Texas	464,657
Total apportioned to States	1,817,966
Unapportioned National Reserve	672
U.S. total	1,818,638

Effective date. Date of filing with the Director, Office of the Federal Register.

Signed at Washington, D.C., on December 24, 1964.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 64-13619; Filed, Dec. 28, 1964; 10:48 a.m.]

[Amdt. 2]

PART 730—RICE

Subpart—Rice Marketing Quota Regulations for 1964 and Subsequent Crop Years

On page 15537 of the FEDERAL REGISTER of November 19, 1964, was published a notice of proposed rule making to issue amendments to the rice marketing quota regulations for 1964 and subsequent crop years. Interested persons were given 30 days from the date of publication of the notice in the FEDERAL REGISTER in which to submit written data, views, or recommendations with respect to the proposed amendments.

No data, views, or recommendations were received and the proposed amendments are adopted as set forth in the notice with the following changes:

1. A paragraph of basis and purpose is added immediately preceding the text of the amendments.

2. An effective date paragraph is added immediately following the text of the amendments.

3. An authority clause is added immediately following the effective date paragraph.

Signed at Washington, D.C., on December 28, 1964.

E. A. JAENKE,
Acting Administrator, Agricultural Stabilization and Conservation Service.

Basis and purpose. The amendments herein are issued under and in accordance with the rice marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended.

The purpose of these amendments is to change the final dates for the disposal of excess rice acreage in the State of Texas, effective for 1965 and subsequent crop years, and to change various cross references to other regulations to show the current designation.

§ 730.1552 [Amended]

1. The second sentence of § 730.1552 is amended by changing the title of the Part 719 reference to read: "Reconstitution of Farms, Allotments, and Bases."

§ 730.1555 [Amended]

2. Section 730.1555 is amended by changing the final dates for the disposal of excess rice acreage for Texas to read:

TEXAS

The counties of Austin, Bastrop, Brazoria, Calhoun, Colorado, Fort Bend, Galveston, Harris, Jackson, Lavaca, Matagorda, Travis, Victoria, Waller, Washington and Wharton, July 1.

The counties of Chambers, Hardin, Jasper, Jefferson, Liberty, Newton, Orange, Polk and Walker, July 15.

Bowie County, September 1.

§ 730.1581 [Amended]

3. The last sentence in paragraph (h) of § 730.1581 is amended by changing the title of the Part 719 reference to read: "Reconstitution of Farms, Allotments, and Bases."

§ 730.1595 [Amended]

4. Paragraph (b) of § 730.1595 is amended by changing the word "Performance" to the word "Compliance".

Effective date: 30 days after publication in the FEDERAL REGISTER.

(Secs. 374, 375, 52 Stat. 65 as amended, 66, as amended; 7 U.S.C. 1374, 1375)

[F.R. Doc. 64-13490; Filed, Dec. 30, 1964; 8:49 a.m.]

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

PART 812—SUGAR REQUIREMENTS AND QUOTAS: HAWAII AND PUERTO RICO

Establishment of Quotas for Local Consumption in 1965

On page 17122 of the FEDERAL REGISTER of December 15, 1964, there was published a notice of proposed rule making to issue a regulation determining sugar requirements for 1965 and establishing quotas for Hawaii and Puerto Rico for the calendar year 1965. Interested persons were given until December 18, 1964, to submit written data, views or arguments for consideration in connection with the proposed regulation.

No views or comments were received relative to the proposed regulation.

The proposed regulation is hereby adopted without change.

Issued at Washington, D.C., this 28th day of December 1964.

CHARLES S. MURPHY,
Acting Secretary.

Basis and purpose. The purpose of Sugar Regulation 812 is to determine pursuant to sections 201 and 203 of the Sugar Act of 1948, as amended (hereinafter referred to as the "Act"), the amount of sugar needed to meet the requirements of consumers in Hawaii and in Puerto Rico and to establish quotas for local consumption in such areas. To the extent required by section 201 of the Act, this regulation establishes sugar requirements based on official estimates of the Department of Agriculture and on statistics published by other agencies of the government.

Since the Act provides that the Secretary of Agriculture determine during December 1964 sugar requirements for local consumption in Hawaii and in Puerto Rico and establish local consumption quotas it is found to be impracticable and not in the public interest to comply with the 30-day effective date requirements of the Administrative Procedure Act, and these regulations shall be effective January 1, 1965.

SEC.
812.1 Sugar requirements and quota—Hawaii.
812.2 Sugar requirements and quota—Puerto Rico.
812.3 Restrictions on marketing.

AUTHORITY: The provisions of this Part 812 issued under sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies secs. 201, 203, 209, 210, 412; 61 Stat. 923, as amended, 925, 928; 7 U.S.C. 1111, 1112, 1119.

§ 812.1 Sugar requirements and quota—Hawaii.

It is hereby determined, pursuant to section 203 of the Act, that the amount of sugar needed to meet the requirements of consumers in Hawaii for the calendar year 1965 is 50,000 short tons, raw value, and a quota of 50,000 short tons, raw value, is hereby established for Hawaii for local consumption for the calendar year 1965.

§ 812.2 Sugar requirements and quota—Puerto Rico.

It is hereby determined, pursuant to section 203 of the Act, that the amount of sugar needed to meet the requirements of consumers in Puerto Rico for the calendar year 1965 is 130,000 short tons, raw value, and a quota of 130,000 short tons, raw value, is hereby established for Puerto Rico for local consumption for the calendar year 1965.

§ 812.3 Restrictions on marketing.

Pursuant to section 209 of the Act, for the calendar year 1965 all persons are hereby prohibited from marketing, pursuant to Part 816 of this chapter (23 F. R. 1943 and 27 F. R. 1450), in Hawaii or in Puerto Rico, for consumption therein, any sugar or liquid sugar after the quota for the area for the calendar year 1965 has been filled. Pursuant to section 211(c) of the Act, the quota for each area may be filled only with sugar produced from sugarcane grown in the respective area.

Statement of bases and considerations. Pursuant to section 203 of the Act, the provisions of section 201 of the Act deemed applicable to the determination of the amounts of sugar needed to meet

the requirements of consumers in Hawaii and in Puerto Rico relate to (1) the quantities of sugar distributed for local consumption in Hawaii and in Puerto Rico during the twelve-month period ended October 31, 1964, (2) deficiencies or surpluses in inventories of sugar, and (3) changes in consumption because of changes in population and demand conditions.

The quantities of sugar distributed for consumption in Hawaii and in Puerto Rico, including that which was lost in refining after charge to the local quotas, during such twelve-month period are estimated to have been approximately 41,000 short tons of sugar, raw value, and 118,000 short tons of sugar, raw value, respectively.

The provisional estimate by the Bureau of the Census of the total population for Hawaii as of July 1, 1964, is 701,000 and for Puerto Rico is 2,577,000. This represents a normal increase in population for Hawaii and Puerto Rico over 1963. No official estimate for either of these areas for 1964 is available.

In Hawaii industrial use accounts for a substantial portion of the total consumption of sugar and this demand is a significant factor in the total sugar requirements. During the period 1958 through 1963 sugar consumption in this area has varied from 120.0 to 138.0 pounds, raw value, per person. These wide year-to-year variations suggest the possibility that requirements could be higher in 1965 than in the twelve months ended October 31, 1964, when sugar marketings approximated 41,000 short tons, raw value.

In Puerto Rico during the twelve months ended October 31, 1964, marketings of sugar for local consumption totaled approximately 120,000 short tons, raw value. Refiners' inventories of sugar as of September 30, 1964, were approximately 15,000 tons higher than those held on September 30, 1963. After making allowance for possible consumption increases in 1965 resulting from population increases, and the larger inventory of sugar held by refiners, the total sugar needed to meet requirements for local consumption in Puerto Rico in 1965 may be approximately 130,000 short tons, raw value.

Circumstances prevailing in the utilization of quota for local consumption in Hawaii and Puerto Rico are such that no special problems arise nor are the objectives of the Act jeopardized if the 1965 local quota is not completely filled. It is therefore, desirable to establish the 1965 requirements and quotas sufficiently high initially so that later adjustments may be avoided.

In accordance with the above, the requirements for local consumption in Hawaii and Puerto Rico for 1965 have been determined to be 50,000 and 130,000 short tons, raw value, respectively.

[F.R. Doc. 64-13512; Filed, Dec. 30, 1964; 8:50 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Tree Nuts), Department of Agriculture

[959.305]

PART 959—ONIONS GROWN IN SOUTH TEXAS

Limitation of Shipments

Notice of rule making with respect to a proposed limitation of shipments regulation to be made effective under Marketing Agreement No. 143 and Order No. 959 (7 CFR Part 959), both as amended, regulating the handling of onions grown in designated counties in South Texas, was published in the FEDERAL REGISTER, November 10, 1964 (29 F.R. 15129). This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

This notice afforded interested persons an opportunity to file data, views, or arguments pertaining thereto not later than thirty days after publication. None was filed.

After consideration of all relevant matters, including the proposal set forth in the aforesaid notice which was recommended by the South Texas Onion Committee, established pursuant to the said amended marketing agreement and order, it is hereby found that the limitation of shipments regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

§ 959.305 **Limitation of shipments.**

During the period beginning March 1, 1965, through June 15, 1965, no handler may (1) package or load onions on Sundays, or (2) handle any lot of onions grown in the production area, except red onions, unless such onions meet the grade requirements of paragraph (a) of this section, one of the applicable size requirements of paragraph (b) of this section, the container requirements of paragraph (c) of this section, and the inspection requirements of paragraph (f) of this section, or unless such onions are handled in accordance with the provisions of paragraphs (d) or (e) of this section.

(a) *Minimum grade.* Not to exceed 20 percent defects of U.S. No. 1 grade. In percentage grade lots, tolerances for serious damage shall not exceed 10 percent including not more than 2 percent decay. Double the lot tolerance shall be permitted in individual packages in percentage grade lots. Application of tolerances in U.S. Grade Standards shall apply to in-grade lots.

(b) *Size requirements.* (1) "Small"—1 to 2¼ inches in diameter, and limited to whites only;

(2) "Repacker"—1¾ to 3 inches in diameter, with 60 percent or more 2 inches in diameter or larger;

(3) 2 to 3½ inches in diameter; or

(4) "Jumbo"—3 inches or larger in diameter.

(c) *Container requirements.* (1) 25 pound bags, with not to exceed in any lot an average net weight of 27½ pounds per bag, and with outside dimensions not larger than 29 inches by 31 inches; or

(2) 50 pound bags, with not to exceed in any lot an average net weight of 55 pounds per bag, and with outside dimensions not larger than 33 inches by 38½ inches.

(3) These container requirements shall not be applicable to onions sold to Federal agencies.

(d) *Minimum quantity exemption.* Any handler may handle, only as individual shipments and other than for resale, not more than 100 pounds of onions per day, in the aggregate, without regard to the requirements of this section or to the inspection and assessment requirements of this part.

(e) *Special purpose shipments and culls.* Onions failing to meet the grade, size, or container requirements of paragraphs (a), (b), or (c), and not exempted under paragraph (d), of this section, may be handled only pursuant to § 959.126 (7 CFR § 959.126). Culls may be handled pursuant to § 959.126(a)(1). Shipments for relief or charity, or for experimental purposes, may be handled pursuant to § 959.126(b). Any such onions may be handled without regard to inspection and assessment requirements.

(f) *Inspection.* (1) No handler may handle onions regulated hereunder (except pursuant to paragraphs (d) or (e) of this section) unless an appropriate inspection certificate has been issued with respect thereto and the certificate is valid at the time of shipment.

(2) No handler may transport or cause the transportation of any shipment of onions by motor vehicle for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto or by documentary evidence on forms furnished by the Committee identifying truck lots to which a valid inspection certificate is applicable and a copy of such inspection certificate or Committee document, upon request, is surrendered to authorities designated by the Committee.

(3) For purpose of operation under this part each inspection certificate or Committee form required as evidence of inspection is hereby determined to be valid for a period not to exceed 72 hours following completion of inspection as shown on the certificate.

(g) *Definitions.* The term "U.S. No. 1" shall have the same meaning as set forth in the United States Standards for Bermuda-Granex-Grano Type Onions (§§ 51.3195–51.3209 of this title), or in the United States Standards for Grades of Onions (§§ 51.2830–51.2850 of this title), whichever is applicable to the particular variety. All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 143 and this part (Order No. 959), both as amended.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 et seq.)

Dated December 28, 1964, to become effective March 1, 1965.

PAUL A. NICHOLSON,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 64–13471; Filed, Dec. 30, 1964; 8:46 a.m.]

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture

[Milk Order No. 1062]

PART 1062—MILK IN ST. LOUIS, MISSOURI, MARKETING AREA

Order Suspending Certain Provisions

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the St. Louis, Missouri, marketing area (7 CFR Part 1062), it is hereby found and determined that:

(a) The following provisions of the order do not tend to effectuate the declared policy of the Act for the months of December 1964 and January 1965:

(1) In the opening paragraph of § 1062.10(b), the numeral "(1),"; and

(2) Subparagraph (1) of § 1062.10(b) relating to shipping requirements for pooling of country plants.

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of the effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

(1) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date;

(2) This suspension order is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area;

(3) This suspension order will enable cooperative associations to maintain pool plant status for certain country plants for the months of December 1964 and January 1965 and facilitate the orderly disposition of the market's reserve supply of milk.

Therefore, good cause exists for making this order effective upon publication in the FEDERAL REGISTER.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for the months of December 1964 and January 1965.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date. Upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on December 24, 1964.

GEORGE L. MEHREN,
Assistant Secretary.

[F.R. Doc. 64–13472; Filed, Dec. 30, 1964; 8:47 a.m.]

No. 254—Pt. I——10

[Milk Order No. 126]

PART 1126—MILK IN NORTH TEXAS MARKETING AREA

Order Amending Order

§ 1126.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the North Texas marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* (1) It is necessary in the public interest to make this order amending the order effective not later than January 1, 1965. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

(2) The provisions of the said order are known to handlers. The recommended decision of the Associated Administrator was issued November 27, 1964, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued December 21, 1964. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective January 1, 1965, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001–1011.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the North Texas marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

1. In § 1126.41, a new paragraph (b) (8) is added to read as follows:

§ 1126.41 Classes of utilization.

* * * * *

(b) * * *

(8) Dumped because buttermilk is not produced from skim milk to which buttermilk culture has been added, if the handler gives prior notification to and opportunity for verification by the market administrator in such manner as the market administrator may require.

2. In § 1126.91, paragraph (a) is revised to read as follows:

§ 1126.91 Butterfat and location differentials to producers.

(a) In making payments to producers pursuant to § 1126.90 (a) or (c), the uniform prices shall be increased or decreased by each one-tenth of one percent which the butterfat content of his milk is above or below 3.5 percent, respectively, at the rate determined by multiplying the total pounds of butterfat in the producer milk allocated to Class I and Class II milk during the month pursuant to § 1126.46 by the respective butterfat differential in each class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resultant figure to the nearest one-tenth of a cent.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601, 674)

Effective date. January 1, 1965.

Signed at Washington, D.C., on December 28, 1964.

GEORGE L. MEHREN,
Assistant Secretary.

[F.R. Doc. 64-13473; Filed, Dec. 30, 1964; 8:47 a.m.]

Title 12—BANKS AND BANKING

Chapter V—Federal Home Loan Bank Board

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[No. FSLIC-1,952]

PART 561—DEFINITIONS

Definition of Specified Assets

DECEMBER 28, 1964.

Resolved that, notice and public procedure having been duly afforded (29 F.R. 15222) and all relevant material presented or available having been considered by it, the Federal Home Loan Bank Board, upon the basis of such consideration and of determination by it of the advisability of amendment of § 561.17 of the rules and regulations for Insurance of Accounts (12 CFR 561.17) in order to eliminate the effect of short-term transactions distorting the computation of specified assets, and for the purpose of effecting such amendment, hereby amends said § 561.17 as follows, effective December 31, 1964.

Paragraph (b) of § 561.17 of the rules and regulations for Insurance of Accounts is hereby amended to read as follows:

§ 561.17 Specified assets.

* * * * *

(b) In computing specified assets at the close of any semiannual period, any asset which is sold or disposed of in one semiannual period and then repurchased or reacquired in the next semiannual period, or purchased or acquired in one semiannual period and then sold or disposed of in the next semiannual period, shall, unless otherwise authorized by the Corporation, be computed as if it had not been sold or disposed of, or purchased or acquired, during such initial semiannual period.

Resolved further that, since semiannual reports prepared as of December 31, 1964, would be distorted by short-term transactions of the type dealt with, the Board hereby finds that postponement of the effective date under the provisions of § 508.14 of the general regulations of the Federal Home Loan Bank Board and section 4(c) of the Administrative Procedure Act is impracticable and contrary to the public interest and provides that the amendment shall become effective as hereinbefore set forth.

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

[SEAL] JOSEPH F. SCHRAM,
Assistant Secretary.

[F.R. Doc. 64-13504; Filed, Dec. 30, 1964; 8:50 a.m.]

[No. FSLIC-1,951]

PART 563—OPERATIONS

Participating Loans

DECEMBER 28, 1964.

Whereas, by Resolution No. FSLIC-1,910, dated November 5, 1964, and duly published in the FEDERAL REGISTER on November 11, 1964 (29 F.R. 15223), this Board resolved that pursuant to Part 508 of the general regulations of the Federal Home Loan Bank Board (12 CFR Part 508), and § 567.1 of the rules and regulations for Insurance of Accounts (12 CFR 567.1), it was proposed that § 563.9-1 of the rules and regulations for Insurance of Accounts (12 CFR 563.9-1) be amended by an amendment the substance of which was set out in said publication, and

Whereas, all relevant material presented or available having been considered by it;

It is resolved, That this Board hereby determines to adopt the amendment, as published, without change.

It is further resolved that, inasmuch as the foregoing amendment relieves restriction, the Board hereby finds that postponement of the effective date under the provisions of § 508.14 of the general regulations of the Federal Home Loan Bank Board and section 4(c) of the Administrative Procedure Act is not required and the Board hereby provides that the said amendment shall become effective on December 31, 1964.

(Secs. 492, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

[SEAL] JOSEPH F. SCHRAM,
Assistant Secretary.

§ 563.9-1 Participation loans.

* * * * *

Amend paragraphs (c) and (d) of § 563.9-1 of the rules and regulations for Insurance of Accounts to read as follows:

(c) *Percentage of assets.* No insured institution shall participate in the making of a loan pursuant to the approval granted by this section or purchase a participation in a loan pursuant to such approval if the amount of such participation interest plus the amount of such institution's outstanding investments in participation interests in loans made pursuant to the approval granted by this section aggregate a total amount exceeding 40 percent of such institution's assets. In the case of an insured institution which, at the close of its most recent semiannual period, had scheduled items, other than assets acquired in a merger instituted for supervisory reasons, not in excess of 4 percent of its specified assets, the said 40 percent shall be exclusive of participation interests in loans on property located more than 50 miles but not more than 100 miles from the insured institution's principal office and outside the territory aforesaid. The provisions of this paragraph do not apply to any loan that is an insured loan or a guaranteed loan.

(d) *Limitations.* No insured institution that originated the loan shall sell a participation in any loan at any time when the percentage of such institution's scheduled items, other than assets acquired in a merger instituted for supervisory reasons, exceeds 4 percent of its specified assets, as reported in its most recent semiannual report.

* * * * *

(Sec. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

[F.R. Doc. 64-13503; Filed, Dec. 30, 1964; 8:50 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter V—Weather Bureau, Department of Commerce

PART 503—SCHEDULE OF CHARGES FOR SERVICES

Part 503 of Chapter V of Subtitle B of Title 15 of the Code of Federal Regulations is revised to read as follows:

§ 503.1 Charges for furnishing copies of weather records.

(a) Duplicating machine copies:

(1) Ozalid, Bruning, and similar processes:	
(i) Synoptic maps and charts:	
(*a*) Up to 360 sq. inches (per copy)	$0.30
(*b*) 361 to 510 sq. inches (per copy)	.31
(*c*) 511 to 800 sq. inches (per copy)	.32
(*d*) 801 to 1000 sq. inches (per copy)	.33
(*e*) 1001 to 1220 sq. inches (per copy)	.35
(*f*) Above 1220 sq. inches $0.37 for first 1220 sq. inches and $0.03 for each additional 144 sq. inches.	
(ii) Other than synoptic maps and charts:	
8 x 10½ (per print)	$0.10
Over 8 x 10½ (per sq. ft.)	.07
(2) Photocopy prints (photostat, etc.):	
8½ x 11 or smaller	$0.35
9 x 12 to 12 x 17	.50
14 x 17 to 18 x 24	.85
(3) Thermofax copies or direct contact prints:	
8½ x 11	$0.11
Larger than 8½ x 11 (per sq. ft.)	.16
(4) Transcopy prints:	
8½ x 10	.40
10 x 12	.40
(5) Xerox copies (maximum size 9 x 4)	.12

(b) Photography:

(1) Prints, black and white:	
(i) Contact:	
8 x 10	.35
11 x 14	.50
14 x 17	.70
16 x 20	1.00
20 x 24	1.25
30 x 40	2.25
(ii) Enlargements by conventional processes:	
5 x 7	.45
8 x 10	.60
11 x 14	1.00
20 x 24	1.50

(iii) Enlargements from available microfilm using microfilm-printing equipment, e.g. 3M Reader Printer, Xerox 1824 Printer:

Up to 18 x 24 ..... .35

(2) Microfilm:

(i) Negative film (one or two pages to exposure on panchromatic contrast film) ..... 35 mm 0.05
Per frame or exposure ..... 16 mm 0.04

(ii) Film copy (excluding radar film printed to register) Silver halide process, diazo process, or Kalvar process, unsprocketed, from negative of uniform density ..... 35 mm 6.00
Per reel ..... 16 mm 5.50

(Reels are approximately 100 ft. in length and the price includes spool and box.)

SPECIAL PRICE NOTE: A single 100 foot reel of 35 mm diazo microfilm, unsprocketed, containing a month of data of the Daily Series, Synoptic Weather Maps, Part II, Northern Hemisphere Data Tabulations, will be furnished at $4.00 per reel on a curent continuing subscription basis. When furnished on an irregular and/or non-current basis, the regular price per reel will apply.

(iii) Film copy, radar film, sprocketed, printed to register.

Positive only.

Per reel, approximately 100 feet ..... 35 mm 9.00
Per reel (see note on length below) ..... 16 mm 7.00

NOTE: If copies from original photography on 16 mm camera, the length is approximately 100 feet. If reduced from original photography on 35 mm camera, the length is approximately 50 feet.

(3) Microfiche, ozalid, negative only, 4" x 6" or 5" x 8" 0.25

SPECIAL PRICE NOTE: A set of 5" x 8" microfiche cards, one for each day of the month, containing a month of data in the Daily Series, Synoptic Weather Maps, Part II, Northern Hemisphere Data Tabulations, will be furnished for $5.00 a month, on a current continuing subscription basis. When furnished on an irregular and/or non-current basis, the regular price per microfiche will apply.

(c) Time spent by field station employees in performing the following services will be charged at the rate of $4.40 per hour if services are performed during the normal working hours, or at the rate of $5.73 per hour if performed on overtime.

(1) Hand transcription of official meteorological records.

(2) Searching map or record files to assemble material.

(3) Unbinding and reassembling bound volumes of maps or records preparatory to making ozalid, photostat, or other reproductions.

NOTE: A minimum charge of $2.00 will be made for a single order on any of the items in this Exhibit except that this minimum charge shall not apply to single orders at a field station for preliminary Local Climatological Data prepared on government equipment.

(59 Stat. 1067, sec. 501, 65 Stat. 290, 5 U.S.C. 606, 140)

Effective date: January 1, 1965.

R. C. GRUBB,
Acting Chief of Weather Bureau.

[F.R. Doc. 64-13513; Filed, Dec. 30, 1964; 8:50 a.m.]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

[Docket No. R-262; Order No. 291]

Monthly Statement of Natural Gas Pipeline Companies

REVISING MONTHLY STATEMENT FORM NO. 11 (18 CFR 260.3)

DECEMBER 23, 1964.

1. By notice of proposed rulemaking issued May 19, 1964, and published in the the FEDERAL REGISTER of May 23, 1964 (29 F.R. 6807), the Commission proposed to revise the reporting requirements of certain of the larger natural gas pipeline companies by revising FPC Form No. 11, submission of which is now required monthly by § 260.3 of the Commission's regulations, and by requiring the early reporting of some of the Form No. 11 information in a new Form No. 11A. Upon further consideration, the Commission has decided to withdraw its proposal for the new Form. For the reasons given herein we are promulgating the revision of FPC Form No. 11.

2. Existing Form No. 11 is required of all Class A and B natural gas pipeline companies and is a monthly report, due 30 days after the end of the reported month, covering certain revenue, expense, and gas volume data. We believe that reports by more than half of the companies now reporting may be discontinued and reporting may be confined to those 31 Class A and B companies selling, storing, and transporting about 90 percent of the natural gas subject to Commission rate regulation. At the same time, to facilitate individual regulation and to guide Commission policy formulation, the Commission plans to obtain in revised Form 11 certain additional data which cannot be determined from the present report, such as current wellhead and city gate prices for interstate pipeline gas and accrued revenues and expenditures of pipelines under producer and pipeline rate increases not yet approved by the Commission. The total information to be derived from revised Form 11 should enable the Commission to appraise more accurately for its regulatory needs such facts as the current level of natural gas activity, the current consumption of and prices charged for gas sold by pipelines, seasonal variations in use of capacity by customer category, the effect of storage upon the monthly peak demand, and the extent of fluctuations in receipts of gas by pipelines from the various sources. In view of the greater detail required by the revised Form 11, the period for reporting is being changed from 30 days to 40 days.

3. Comments were received from 19 of the pipeline companies affected, in addition to the Independent Natural Gas Association of America, and from the California Public Utilities Commission, one consulting firm, one brokerage company, and one private individual. There was some criticism of the additional administrative burden entailed; on the other hand, there were useful comments and suggestions which have been adapted or incorporated in the forms and regulations. Thus, peak day delivery figures in Table 4 are being limited to the winter months and such other months in which they are measured by the company. Definitions have been supplied for such terms as "imports", and "off-peak", and Table 5 identifies the monthly reporters and other interstate pipelines.

The Commission finds: In view of the foregoing and upon consideration of all relevant matters presented, it is necessary and appropriate in carrying out the provisions of the Natural Gas Act that FPC Report Form No. 11 be revised and promulgated in form as hereinafter ordered.

The Commission, acting pursuant to the Natural Gas Act, as amended, particularly Sections 10 and 16 thereof (52 Stat. 826, 830; 15 U.S.C. 717i, 717o), orders:

FPC Form No. 11 is revised as set out in Attachment A hereto.[1]

Section 260.3, Subchapter G of Chapter I, Title 18 of the Code of Federal Regulations is amended to read as follows:

§ 260.3 Form No. 11, Natural gas pipeline company monthly statement.

(a) The form of the monthly statement for natural gas companies designated therein, entitled FPC Form No. 11 is prescribed for the month beginning December, 1964, and thereafter.

(b) Each natural gas company, as defined in the Natural Gas Act, whose combined gas sales for resale and gas transported or stored for a fee exceeded 50 million Mcf at 14.73 psia (60° F) in the previous calendar year shall prepare and file with the Commission for the month beginning December, 1964, and for each month thereafter, two copies of Monthly Statement, FPC Form No. 11. Such copies shall be filed within 40 days after the end of the reported month and shall be signed by the Chief Accounting Officer of the reporting company, but is not required to be under oath.

The title of this proceeding shall read as set forth in the caption above.

Companies presently filing existing Form 11 which are not required to file the new Form 11, herein promulgated, shall continue to report on the form heretofore in use through the reporting month of December 1964.

[1] Filed as part of the original document.

This amendment shall become effective upon issuance of this order.

The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Dec. 64-13452; Filed, Dec. 30, 1964; 8:45 a.m.]

Title 19—CUSTOMS DUTIES

APPENDIX A—TABLE OF AMENDMENTS TO THE TARIFF SCHEDULES OF THE UNITED STATES

The following entries are added to Appendix A of Title 19, tabulated in the order of line item numbers and headnote designations affected:

SCHEDULE 1—ANIMAL AND VEGETABLE PRODUCTS

PART 11—COFFEE, TEA, MATÉ, AND SPICES

Item	Articles	Rates of duty 1	Rates of duty 2	Amendatory instrument
	Subpart A—Coffee and Coffee Substitutes, Tea, Maté			As amended by Pub. Law 88-337, 78 Stat. 232.
	Subpart A headnotes: 1. The rates of duty specified in items 160.10, 160.20, 160.21, and 160.22 shall not apply to any product imported into Puerto Rico upon which a duty is imposed under the authority of section 319 of this Act.			
	Coffee extracts, essences, and concentrates (including soluble or instant coffee):			
160.20	Soluble or instant coffee (containing no admixture of sugar, cereal, or other additive).	Free	Free	As amended Pub. Law 88-337, 78 Stat. 232.
160.21	Other	3 cents per lb.	3 cents per lb.	
160.22	If products of Cuba	2.4 cents per lb.(s).		

SCHEDULE 3—TEXTILE FIBERS AND TEXTILE PRODUCTS

PART 1—TEXTILE FIBERS AND WASTES; YARNS AND THREADS

	Subpart C—Wool and Related Animal Hair			
	Subpart C headnotes: 4. For the purposes of item 306.00—			
	(a) a tolerance of not more than 10 percent of wools other than Karakul not finer than 44s may be allowed in each bale or package of wools imported as not finer than 40s, and a tolerance of not more than 10 percent of wools not finer than 48s may be allowed in each bale or package of wools imported as not finer than 46s.			As amended by Pub. Law 88-331, 78 Stat. 226.
306.00	Wools provided for in item 306.10, 306.11, 306.12, or 306.13, all other wools of whatever blood or origin not finer than 46s (except carbonized wools), and hair of the camel provided for in item 306.40, 306.41, 306.42, or 306.43, entered by a dealer, manufacturer, or processor for use only in the manufacture of camel hair belting, felt or knit boots, floor coverings, heavy fulled lumbermen's socks, press cloth, or papermakers' felts; and Karakul wools, and other wools of whatever blood or origin not finer than 40s, entered by a dealer, manufacturer, or processor for use only in the manufacture of pressed felt for polishing plate and mirror glass.	Free, under bond in accordance with headnote 4 of this subpart.	Free, under bond in accordance with headnote 4 of this subpart.	As amended by Pub. Law 88-331, 78 Stat. 226.

SCHEDULE 8—SPECIAL CLASSIFICATION PROVISIONS

PART 1—ARTICLES EXPORTED AND RETURNED

Item	Articles	Rates of duty 1	Rates of duty 2	Amendatory instrument
	Subpart A—Articles Not Advanced or Improved Abroad			
	Subpart A headnotes: 2. For the purposes of item 804.00—			
	(a) when because of the destruction of customs records or for other cause it is impracticable to establish whether drawback was allowed, or the amount allowed, on a returned article, there shall be assessed thereon an amount of duty equal to the estimated drawback and internal-revenue tax which would be allowable or refundable if the imported merchandise used in the manufacture or production of the returned article were dutiable or taxable at the rate applicable to such merchandise on the date of entry, but in no case more than the duty and tax that would apply if the article were wholly of foreign origin;			
	(b) tobacco products and cigarette papers and tubes classifiable under such item may be released from customs custody, without payment of that part of the duty attributable to the internal-revenue tax, for return to internal-revenue bond as provided by section 5704(e) of the Internal Revenue Code of 1954; and			As amended by Pub. Law 88-342, 78 Stat. 234.
	(c) in order to facilitate the ascertainment and collection of the duty provided for, the Secretary of the Treasury is authorized to ascertain and specify the amounts of duty equal to drawback or internal-revenue tax which shall be applied to articles or classes or kinds of articles, and to exempt from the assessment of duty articles or classes or kinds of articles with respect to which the collection of such duty involves expense and inconvenience to the Government which is disproportionate to the probable amount of such duty.			

PART 4—IMPORTATIONS OF RELIGIOUS, EDUCATIONAL, SCIENTIFIC, AND OTHER INSTITUTIONS

	Part 4 headnotes: 1. Except as provided in items 850.50 and 852.20, the articles covered by this part must be imported exclusively for the use of the institutions involved, and not for distribution, sale, or other commercial use.			As amended by Pub. Law 88-482, 78 Stat. 594.
	Articles imported for use in any scientific public collection for exhibition for scientific or educational purposes:			
852.20	Wild animals (including birds and fish) imported for use, or for sale for use, in any scientific public collection for exhibition for scientific or educational purposes.	Free	Free	As amended by Pub. Law 88-482, 78 Stat. 594.

PART 5—SAMPLES; ARTICLES ADMITTED FREE OF DUTY UNDER BOND

Subpart C—Articles Admitted Temporarily Free of Duty Under Bond		
Subpart C headnotes: 1. The articles described in the provisions of this subpart, when not imported for sale or for sale on approval, may be admitted into the United States without the payment of duty, under bond for their exportation within 1 year from the date of importation, which period, in the discretion of the Secretary of the Treasury, may be extended, upon application, for one or more further periods which, when added to the initial 1 year, shall not exceed a total of 3 years, except that articles imported under item 864.75 shall be admitted under bond for their exportation within 6 months from the date of importation and such 6-months period shall not be extended. For purposes of this headnote, an aircraft engine or propeller, or any part or accessory of either, imported under item 864.05, which is removed physically from the United States as part of an aircraft departing from the United States in international traffic shall be treated as exported.	----------	As amended by Pub. Law 88-334, 78 Stat. 231.

APPENDIX TO THE TARIFF SCHEDULES

PART 1—TEMPORARY LEGISLATION

Item	Article	Rates of duty 1	Rates of duty 2	Effective period	Amendatory instrument
	Subpart B—Temporary Provisions Amending the Tariff Schedules				
907.15	Aluminum oxide (alumina) (provided for in item 417.12, part 2C, schedule 4) when imported for use in producing aluminum.	Free	Free	On or before July 15, 1966.	As amended by Pub. Law 88-362, 78 Stat. 298.
909.20	Natural graphite, crude and refined, provided for in item 517.31, part 1E, schedule 5, if valued $50 per ton or less.	Free	Free	On or before June 30, 1966.	As amended by Pub. Law 88-329, 78 Stat. 225.
909.30	Bauxite, calcined (provided for in item 521.17, part 1J, schedule 5).	Free	Free	On or before July 15, 1966.	As amended by Pub. Law 88-362, 78 Stat. 298.
911.05	Bauxite ore (provided for in item 601.06, part 1, schedule 6).	Free	Free	On or before July 15, 1966.	As amended by Pub. Law 88-362, 78 Stat. 298.
911.07	Manganese ore, including ferruginous manganese ore, and manganiferous iron ore, all the foregoing containing over 10 percent by weight of manganese (provided for in item 601.27, part 1, schedule 6).	Free	1 cent per lb. on manganese content.	On or before June 30, 1967.	As added by Pub. Law 88-338, 78 Stat. 232.

Item	Article	Rates of duty 1-a	Rates of duty 1-b	Rates of duty 2	Effective period	Amendatory instrument
	Metal waste and scrap (provided for in part 2, schedule 6), except lead, zinc, and tungsten waste and scrap; unwrought metal (except copper, lead, zinc, and tungsten) in the form of pigs, ingots, or billets (a) which are defective or damaged, or have been produced from melted down metal waste and scrap for convenience in handling and transportation without sweetening, alloying, fluxing, or deliberate purifying, and (b) which cannot be commercially used without remanufacture; relaying or rerolling rails; and articles of metal (except articles of lead, of zinc, or of tungsten, and not including metal-bearing materials provided for in schedule 4 or in part 1 of schedule 6 and not including unwrought metal provided for in part 2 of schedule 6) to be used in remanufacture by melting:					
911.10	Copper waste and scrap	1.7 cents per lb. on 99.6% of copper content.	2 cents per lb. on 99.6% of copper content.	4 cents per lb. on 99.6% of copper content.	On or before June 30, 1965.	As amended by Pub. Law 88-324, 78 Stat. 222.
911.11	Articles of copper	1.275 cents per lb.	1.5 cents per lb.	3 cents per lb.		
911.12	Other	Free	Free	Free		

		Rates of duty		Effective period	
		1	2		
911.70	Copying lathes used for making rough or finished shoe lasts from models of shoe lasts and, in addition, capable of producing more than one size shoe last from a single size model of a shoe last (provided for in item 674.42, part 4F, schedule 6).	Free	Free	On or before June 30, 1966.	As amended by Pub. Law 88-336, 78 Stat. 231.
915.20	The personal and household effects (with such limitation on the importation of alcoholic beverages and tobacco products as the Secretary of the Treasury may prescribe) of any person in the service of the United States who returns to the United States upon the termination of assignment to extended duty (as defined in regulations issued in connection with this provision) at a post or station outside the customs territory of the United States, or of returning members of his family who have resided with him at such post or station, or of any person evacuated to the United States under Government orders or instructions (see part 2B of schedule 8).	Free (see headnote 2 of this subpart).	Free (see headnote 2 of this subpart).	On or before June 30, 1966.	As amended by Pub. Law 88-323, 78 Stat. 222.

PART 3—ADDITIONAL IMPORT RESTRICTIONS PROCLAIMED PURSUANT TO SECTION 22 OF THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

Item	Article	Rates of duty		Amendatory instrument
		1	2	
	Part 3 headnotes: 2. *Exclusions.*—The import restrictions provided for in this part do not apply with respect to— (d) certified or registered seed wheat for use for seeding and crop-improvement purposes, in bags tagged and sealed by an officially recognized seed-certifying agency of the country of production, if— (i) the individual shipment amounts to 100 bushels (of 60 pounds each for wheat) or less, or (ii) the individual shipment amounts to more than 100 bushels and the written approval of the Secretary of Agriculture or his designated representative is presented at the time of entry, or bond is furnished in a form prescribed by the Commissioner of Customs in an amount equal to the value of the merchandise as set forth in the entry, plus the estimated duty as determined at the time of entry, conditioned upon the production of such written approval within six months from the date of entry;			As amended by Proclamation 3597, 29 F.R. 9421; 3 CFR.
		Quota quantity (in pounds)		
960.1	Whenever, in any 12-month period beginning July 1 in any year (January 1 in any year for item 950.06), the respective aggregate quantity specified below for one of the numbered classes of articles has been entered, no article in such class may be entered during the remainder of such period: Dried milk, dried cream, and dried whey provided for in part 4 of schedule 1: Described in items 115.45 and 118.05		496,000	As amended by Proclamation 3597, 29 FR 9421; 3 CFR.

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 51—CANNED VEGETABLES

BLACK-EYE PEAS, POTATOES; CONFIRMATION OF EFFECTIVE DATE OF ORDER LISTING EDTA SALTS AS OPTIONAL INGREDIENTS

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and in accordance with the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (21 CFR 2.90; 29 F.R. 471), notice is given that no objections were filed to the order published in the FEDERAL REGISTER November 5, 1964 (29 F.R. 14984), that amended the identity standard for canned vegetables other than those specifically regulated to permit the optional use of disodium EDTA in canned black-eye peas and calcium disodium EDTA in canned potatoes. The amendments promulgated by that order will become effective January 4, 1965.

Dated: December 24, 1964.

JOHN L. HARVEY,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 64-13485; Filed, Dec. 30, 1964; 8:48 a.m.]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

RUBBER ARTICLES INTENDED FOR REPEATED USE

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition (FAP 5B1506) filed by The B. F. Goodrich Company, Akron, Ohio, and other relevant material, has concluded that the food additive regulations should be amended to provide for the use of *N*-alkyl(C_{14}-C_{18})-1,3-propanediamine-*N*,*N'*,*N'*-triacetic acid as an antioxidant in rubber articles intended for repeated use in contact with food. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.90; 29 F.R. 471), § 121.2562(c)(4)(iii) is amended by inserting alphabetically in the list of substances a new item, as follows:

§ 121.2562 Rubber articles intended for repeated use.

(c) * * *
(4) * * *
(iii) * * *

N-Alkyl(C_{14}-C_{18})-1,3-propanediamine-*N*,*N'*,*N'*-triacetic acid.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C., 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: December 24, 1964.

JOHN L. HARVEY,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 64-13486; Filed, Dec. 30, 1964; 8:48 a.m.]

Chapter II—Bureau of Narcotics, Department of the Treasury

[T.D. 75]

PART 305—OPIATES

Piritramid Classified as an Opiate

Notice is hereby given pursuant to the provisions of section 5(b) of the Narcotics Manufacturing Act of 1960, 74 Stat. 60, 21 U.S.C. 503(b), Supp. V and 21 CFR 307.61(b) that the United States has received notification under date of September 17, 1964, from the Secretary-General of the United Nations that the World Health Organization has found a certain substance, not heretofore determined to be an opiate, to fall under the regime laid down in the 1931 Convention for the drugs specified in Article 1, paragraph 2, Group I of that Convention.

The substance and its salts to which the World Health Organization decision relates and which has been found by that Organization to be convertible into a drug capable of producing addiction is:

(Piritramid) (R. 3365) 1-(3-cyano-3,3-diphenylpropyl)-4-(1-piperidino) piperidine-4-carboxylic acid amide.

Accordingly, § 305.2(b) is amended by adding a new drug to the chronological list of findings. As amended, § 305.2(b) reads as follows:

§ 305.2 Chronological list of findings.

* * * * *

(b) The following is a chronological list of drugs or other substances found by the World Health Organization as being capable of producing addiction or of conversion into a drug or other substance capable of producing addiction and designated as opiates by the Commissioner of Narcotics pursuant to the provisions of § 307.61(b) of this chapter. Drugs and other substances listed include any salts thereof.

JUNE 20, 1962

(Methadone - intermediate) 4 - cyano - 2 - dimethylamino-4,4 diphenylbutane.
(Pethidine - intermediate - A) 4 - cyano - 1 - methyl-4-phenylpiperidine.
(Moramide-intermediate) 2-methyl-3-morpholino - 1,1 - diphenylpropanecarboxylic acid.

APRIL 2, 1963

(Pethidine-intermediate-C) 1-methyl-4-phenylpiperidine-4-carboxylic acid.

APRIL 7, 1964

(Norpipanone) 4,4-diphenyl-6-piperidino-3-hexanone.
(Fentanyl) 1-phenethyl-4-N-propionylanilinopiperidine.

DECEMBER 31, 1964

(Piritramid) (R. 3365) 1-(3-cyano-3, 3-diphenylpropyl)-4-(1-piperidino) piperidine-4-carboxylic acid amide.

Because this amendment of § 305.2(b) merely adds to the chronological list of findings a new drug designated by the World Health Organization as being convertible into a drug capable of producing addiction and therefore recognized and published as an opiate by the Commissioner of Narcotics under the provisions of section 5(b) of the Narcotics Manufacturing Act of 1960, 74 Stat. 60, 21 U.S.C. 503(b), Supp. V and 21 CFR 307.61(b), it is hereby found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

Effective date. This Treasury Decision shall become effective upon publication in the FEDERAL REGISTER.

(Sec. 5(b) Pub. Law 86-429 (74 Stat. 60); sec. 17, Pub. Law 86-429; 74 Stat. 67)

[SEAL] HENRY L. GIORDANO,
Commissioner of Narcotics.

Approved: December 22, 1964.

JAMES A. REED,
Assistant Secretary of the Treasury.

[F.R. Doc. 64-13476; Filed, Dec. 30, 1964; 8:47 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6789]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Carryback and Carryover of, and Overall Limitation on, Foreign Tax Credit

On June 16, 1964, notice of proposed rule making was published in the FEDERAL REGISTER (29 F.R. 7679) regarding the amendment of Income Tax Regulations (26 CFR Part 1) to conform such regulations to section 42(a) of the Technical Amendments Act of 1958 (72 Stat. 1639) and to sections 1, 2, 3 (a) and (b), and 6(b)(2) of the Act of September 14, 1960 (Public Law 86-780, 74 Stat. 1010, 1011, 1013, 1016), and to make clarifying changes. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following amendments are hereby adopted effective as provided:

PARAGRAPH 1. Section 1.904-1, as set forth in the notice of proposed rule making, is revised to read.

PAR. 2. Section 1.904-3, as set forth in the notice of proposed rule making, is revised.

(Sec. 7805 of the Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] BERTRAND M. HARDING,
Acting Commissioner of Internal Revenue.

Approved: December 28, 1964.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) to section 42(a) of the Technical Amendments Act of 1958 (72 Stat. 1639) and to the first section, section 2, section 3 (a) and (b), and section 6(b)(2) of the Act of September 14, 1960 (Public Law 86-780, 74 Stat. 1010, 1011, 1013, 1016), and to make clarifying changes, such regulations are hereby amended as follows, effective as provided:

PARAGRAPH 1. Section 1.901 is amended by revising section 901(a), by revising so much of section 901(b) as precedes paragraph (1) thereof, and by adding a historical note at the end of § 1.901. These revised and added provisions read as follows:

§ 1.901 Statutory provisions; taxes of foreign countries and of possessions of United States.

Sec. 901. *Taxes of foreign countries and of possessions of United States*—(a) *Allowance of credit.* If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to the applicable limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under section 902. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year. The credit shall not be allowed against the tax imposed by section 531 (relating to the tax on accumulated earnings), against the additional tax imposed for the taxable year under section 1333 (relating to war loss recoveries), or against the personal holding company tax imposed by section 541.

(b) *Amount allowed.* Subject to the applicable limitation of section 904, the following amounts shall be allowed as the credit under subsection (a):

* * * * *

[Sec. 901 as amended by sec. 3 (a) and (b), Act of Sept. 14, 1960 (Pub. Law 86-780, 74 Stat. 1013)]

PAR. 2. Section 1.901-1 is amended by revising paragraph (d) to read as follows:

§ 1.901-1 Allowance of credit for taxes.

* * * * *

(d) *Period during which election can be made or changed.* The taxpayer may, for a particular taxable year, claim the benefits of section 901 (or change his choice if previously made) at any time before the expiration of the period prescribed by section 6511(a) (or section 6511(c) if the period is extended by agreement) for making a claim for credit or refund of the tax imposed by chapter 1 for such taxable year. Such period for such taxable year is determined without regard to the special period prescribed by section 6511(d)(3).

* * * * *

PAR. 3. Section 1.902 is amended by adding a new subsection (e) at the end of section 902 and by adding a historical note at the end of § 1.902. The added provisions read as follows:

§ 1.902 Statutory provisions; credit for corporate stockholder in foreign corporation.

Sec. 902. *Credit for corporate stockholder in foreign corporation.* * * *

(e) *Cross reference.* For reduction of credit with respect to dividends paid out of accumulated profits for years for which cer-

tain information is not furnished, see section 6038.

[Sec. 902 as amended by sec. 6(b)(2), Act of Sept. 14, 1960 (Pub. Law 86-780, 74 Stat. 1016)]

PAR. 4. Section 1.902-1 is amended by revising paragraphs (a)(1), (b), and (c). These amended provisions read as follows:

§ 1.902-1 Taxes of foreign corporation.

(a) *Domestic corporation owning stock of a foreign corporation.* (1) In the case of a domestic corporation which owns at least 10 percent of the voting stock of a foreign corporation from which it receives dividends in any taxable year, the credit for foreign taxes includes the income, war profits, and excess profits taxes deemed to have been paid by such domestic corporation under section 902. The amount of taxes so deemed to have been paid by the domestic corporation is determined by taking the same proportion of any income, war profits, and excess profits taxes paid, or deemed to have been paid, or accrued (determined with regard to the reductions, if any, under section 6038(b)) to any foreign country or to any possession of the United States by such foreign corporation, on or with respect to the accumulated profits of such foreign corporation from which such dividends were paid, which the amount of any such dividends received bears to the amount of such accumulated profits. If dividends are received from more than one such foreign corporation, the taxes deemed to have been paid by the domestic corporation are computed separately for the dividends received from each such foreign corporation. If the credit for foreign taxes includes taxes deemed to have been paid under section 902, the taxpayer must furnish the same information with respect to such taxes as it is required to furnish with respect to the taxes actually paid or accrued by it. Taxes paid or accrued by such a foreign corporation are deemed to have been paid by the domestic corporation for purposes of credit only. For other information required to be furnished by the domestic corporation with respect to certain foreign corporations and the reduction of credit if such information is not furnished, see section 6038 and the regulations thereunder. For other limitations on the amount of credit, see § 1.904-1.

* * * * *

(b) *Foreign corporation owning stock of another foreign corporation.* If any foreign corporation (hereafter in this paragraph referred to as the former corporation) coming within the scope of paragraph (a) of this section owns 50 percent or more of the voting stock of another foreign corporation (hereafter in this paragraph referred to as the latter corporation) from which it receives dividends in any taxable year, the former corporation shall be deemed under section 902(b) to have paid that proportion of any income, war profits, and excess profits taxes paid or accrued (determined with regard to the reductions, if any, under section 6038(b)) to any foreign country or to any possession of the United States by the latter corporation, on or with respect to the accumulated profits of such latter corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits. Such tax so deemed to have been paid shall then be taken into consideration in determining the amount of income, war profits, and excess profits taxes paid or deemed to have been paid by the former corporation to any possession or foreign country on or with respect to its own accumulated profits from which the dividends were paid by such corporation to the domestic corporation.

(c) *Source of income of foreign subsidiaries and country to which tax is deemed to have been paid.* For the purpose of section 904(a)(1) (relating to the per-country limitation), dividends of a foreign corporation (at least 10 percent of whose voting stock is owned by a domestic corporation) shall be deemed to have been derived from sources within the foreign country or possession of the United States in which such foreign corporation is incorporated, to the extent that under section 862(a)(2) such dividends are treated as income from sources without the United States. In addition, for purposes of section 904(a)(1) all income, war profits, and excess profits taxes paid, or deemed to have been paid under section 902, by such foreign corporation to any foreign country or possession of the United States shall be deemed to have been paid to the country or possession under whose laws such foreign corporation is incorporated.

* * * * *

PAR. 5. Section 1.904 is amended by revising section 904 and by adding a historical note. The amended section reads as follows:

§ 1.904 Statutory provisions; limitation on credit.

Sec. 904. *Limitation on credit*—(a) *Alternative limitations*—(1) *Per-country limitation.* In the case of any taxpayer who does not elect the limitation provided by paragraph (2), the amount of the credit in respect of the tax paid or accrued to any foreign country or possession of the United States shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources within such country or possession (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

(2) *Overall limitation.* In the case of any taxpayer who elects the limitation provided by this paragraph, the total amount of the credit in respect of taxes paid or accrued to all foreign countries and possessions of the United States shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the United States (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

(b) *Election of overall limitation*—(1) *In general.* A taxpayer may elect the limitation provided by subsection (a)(2) for any taxable year beginning after December 31, 1960. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary or his delegate with respect to any taxable year.

(2) *Election after revocation.* If a taxpayer has made an election under paragraph (1) and such election has been revoked, such taxpayer shall not be eligible to make a new election under paragraph (1) for any taxable year, unless the Secretary or his delegate consents to such new election.

(3) *Form and time of election and revocation.* An election under paragraph (1), and any revocation of such an election, may be made only in such manner as the Secretary or his delegate may by regulations prescribe. Such an election or revocation with respect to any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year.

(c) *Taxable income for purpose of computing limitation.* For purposes of computing the applicable limitation under subsection (a), the taxable income in the case of an individual, estate, or trust shall be computed without any deduction for personal exemptions under section 151 or 642(b).

(d) *Carryback and carryover of excess tax paid.* Any amount by which any such tax paid or accrued to any foreign country or possession of the United States for any taxable year beginning after December 31, 1957, for which the taxpayer chooses to have the benefits of this subpart exceeds the applicable limitation under subsection (a) shall be deemed tax paid or accrued to such foreign country or possesison of the United States in the second preceding taxable year in the first preceding taxable year, and in the first, second, third, fourth, or fifth succeeding taxable years, in that order and to the extent not deemed tax paid or accrued in a prior taxable year, in the amount by which the applicable limitation under subsection (a) for such preceding or succeeding taxable year exceeds the sum of the tax paid or accrued to such foreign country or possession for such preceding or succeeding taxable year and the amount of the tax for any taxable year earlier than the current taxable year which shall be deemed to have been paid or accrued in such preceding or subsequent taxable year (whether or not the taxpayer chooses to have the benefits of this subpart with respect to such earlier taxable year). Such amount deemed paid or accrued in any year may be availed of only as a tax credit and not as a deduction and only if taxpayer for such year chooses to have the benefits of this subpart as to taxes paid or accrued for that year to foreign countries or possessions. For purposes of this subsection, the terms "second preceding taxable year" and "first preceding taxable year" do not include any taxable year beginning before January 1, 1958.

(e) *Carrybacks and carryovers where overall limitation is elected*—(1) *Foreign taxes to be aggregated for purposes of subsection (d).* With respect to each taxable year of the taxpayer to which the limitation provided by subsection (a)(2) applies, the taxes referred to in the first sentence of subsection (d) shall, for purposes of applying such first sentence, be aggregated on an overall basis (rather than taken into account on a per-country basis).

(2) *Foreign taxes may not be carried from per-country year to overall year or from overall year to per-country year.* No amount paid or accrued for any taxable year to which the limitation provided by subsection (a)(1) applies shall (except for purposes of determining the number of taxable years which have elapsed) be deemed paid or accrued under subsection (d) in any taxable year to which the limitation provided by subsection (a)(2) applies. No amount paid or accrued for any taxable year to which the limitation provided by subsection (a)(2) applies shall (except for purposes of determining the number of taxable years which have elapsed) be deemed paid or accrued under subsection (d) in any taxable year to which the limitation provided by subsection (a)(1) applies.

(f) *Cross-reference.* For special rule relating to the application of the credit provided by section 901 in the case of affiliated groups which include Western Hemisphere trade corporations for years in which the limitation provided by subsection (a)(2) applies, see section 1503(d).

[Sec. 904 as amended by sec. 42(a), Technical Amendments Act 1958 (72 Stat. 1639); sec. 1, Act of Sept. 14, 1960 (Pub. Law 86-780, 74 Stat. 1010)]

PAR. 6. Section 1.904-1 is amended to read as follows:

§ 1.904-1 Limitation on credit for foreign taxes.

(a) *Per-country limitation*—(1) *General.* In the case of any taxpayer who does not elect the overall limitation under section 904(a)(2), the amount allowable as a credit for income or profits taxes paid or accrued to a foreign country or a possession of the United States is subject to the per-country limitation prescribed in section 904(a)(1). Such limitation provides that the credit for such taxes paid or accrued (including those deemed to have been paid or accrued other than by reason of section 904(d)) to each foreign country or possession of the United States shall not exceed that proportion of the tax against which credit is taken which the taxpayer's taxable income from sources within such country or possession (but not in excess of taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

(2) *Illustration of principles.* The operation of the per-country limitation under section 904(a)(1) on the credit for foreign taxes paid or accrued may be illustrated by the following examples:

Example (1). The credit for foreign taxes allowable for 1954 in the case of X, an unmarried citizen of the United States who in 1954 received the income shown below and had three exemptions under section 151, is $14,904, computed as follows:

Taxable income (computed without deductions for personal exemptions) from sources within the United States	$50,000
Taxable income (computed without deductions for personal exemptions) from sources within Great Britain	25,000
Total taxable income	75,000
United States income tax (based on taxable income computed with the deductions for personal exemptions)	44,712
British income and profits taxes	18,000
Per-country limitation $\left(\frac{25,000}{75,000}\text{ of }\$44,712\right)$	14,904
Credit for British income and profits taxes (total British income and profits taxes, reduced in accordance with the per-country limitation)	14,904

Example (2). Assume the same facts as in example (1), except that the sources of X's income and taxes paid are as shown below. The credit for foreign taxes allowable to X is $13,442.40, computed as follows:

Taxable income (computed without deductions for personal exemptions) from sources within the United States	$50,000
Taxable income (computed without deductions for personal exemptions) from sources within Great Britain	$15,000
Taxable income (computed without deductions for personal exemptions) from sources within Canada	10,000
Total taxable income	75,000
United States income tax (based on taxable income computed with the deductions for personal exemptions)	44,712
British income and profits taxes	10,800
Per-country limitation on British income and profits taxes $\left(\frac{15,000}{75,000}\text{ of }\$44,712\right)$	8,942.40
Credit for British income and profits taxes as limited by per-country limitation	8,942.40
Canadian income and profits taxes	4,500.00
Per-country limitation on Canadian income and profits taxes $\left(\frac{10,000}{75,000}\text{ of }\$44,712\right)$	5,961.60
Credit for Canadian income and profits taxes (total Canadian income and profits taxes, since such amount does not exceed the per-country limitation)	4,500.00
Total amount of credit allowable (sum of credits—$8,942.40 plus $4,500)	13,442.40

Example (3). A domestic corporation realized taxable income in 1954 in the amount of $100,000, consisting of $50,000 from United States sources and dividends of $50,000 from a Brazilian corporation, more than 10 percent of whose voting stock it owned. The Brazilian corporation paid income and profits taxes to Brazil on its income and in addition paid a dividend tax for the account of its shareholders on income distributed to them, the latter tax being withheld and paid at the source. The domestic corporation's credit for foreign taxes is $23,250, computed as follows:

Taxable income from sources within the United States	$50,000
Taxable income from sources within Brazil	50,000
Total taxable income	100,000
United States income tax	46,500
Dividend tax paid at source to Brazil	19,000
Income and profits taxes deemed under section 902 to have been paid to Brazil, computed as follows:	
Dividends received from Brazilian corporation during 1954	$50,000
Income of Brazilian corporation during 1954	200,000
Income and profits taxes paid to Brazil on $200,000	30,000
Accumulated profits ($200,000 minus $30,000)	170,000
Brazilian taxes applicable to accumulated profits distributed: $\frac{50,000}{170,000}\text{ of }\frac{170,000}{200,000}\text{ of }\$30,000$	7,500
Total income and profits taxes paid and deemed to have been paid to Brazil	26,500
Per-country limitation $\left(\frac{50,000}{100,000}\text{ of }\$46,500\right)$	23,250
Credit for Brazilian income and profits taxes as limited by per-country limitation	23,250

(b) *Overall limitation*—(1) *General.* In the case of any taxpayer who elects the overall limitation provided by section 904(a)(2), the total credit for taxes paid or accrued (including those deemed to have been paid or accrued other than by reason of section 904(d)) shall not exceed that proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the United States (but not in excess of taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

(2) *Illustration of principles.* The operation of the overall limitation under section 904(a)(2) may be illustrated by the following example:

Example. Corporation X, a domestic corporation, for its taxable year beginning January 1, 1961, elects the overall limitation provided by section 904(a)(2). For taxable year 1961 corporation X has taxable income of $275,000 of which $200,000 is from sources without the United States. The United States income tax is $137,500. During the taxable year corporation X pays or accrues to foreign countries $105,000 in income and profits taxes, consisting of $45,000 paid or accrued to foreign country Y and $60,000 to foreign country Z. The credit for such foreign taxes is limited to $100,000, i.e., $\frac{200,000}{275,000}\times\$137,500$. The limitation would be the same whether or not some portion of the $200,000 of the taxable income from sources without the United States is from sources on the high seas or in a foreign country (other than Y and Z) which imposed no taxes allowable as a credit.

(c) *Special computation of taxable income.* For purposes of computing the limitations under paragraphs (a) and (b) of this section, the taxable income in the case of an individual, estate, or trust shall be computed without any deduction for personal exemptions under section 151 or 642(b).

(d) *Election of overall limitation*—(1) *General.* The initial election under section 904(b) of the overall limitation provided by section 904(a)(2) may be made by the taxpayer for any taxable year beginning after December 31, 1960, without securing the consent of the Commissioner. The taxpayer may, for the first taxable year for which the election is to be made, make such election at any time before the expiration of the period referred to in paragraph (d) of § 1.901-1 for choosing the benefits of section 901 for such taxable year. Having made the initial election, the taxpayer may, within the time prescribed for making such election for such taxable year, revoke such election without the consent of the Commissioner. If such revocation is timely and properly made, the taxpayer may make his initial election of the overall limitation for a later taxable year without the consent of the Commissioner. If, however, the taxpayer makes the initial election for a taxable year and the period prescribed for making such election for such taxable year expires, the taxpayer must continue the election of the overall limitation for all subsequent taxable years (whether or not foreign taxes were paid or accrued for any such year and notwithstanding that a deduction for foreign taxes under section 164 was claimed for any such year) until revoked with the consent of the Commis-

sioner. See section 904(b)(1). If the election for any taxable year is revoked with the consent of the Commissioner, the taxpayer may not make a new election for such taxable year or for any subsequent taxable year without the consent of the Commissioner. If the election of the overall limitation is revoked for a taxable year, the per-country limitation shall apply to such taxable year and to all taxable years thereafter unless a new election of the overall limitation is made, either with or without the consent of the Commissioner in accordance with this section.

(2) *Method of making the initial election.* The initial election of the overall limitation under section 904(b) shall be made on Form 1116 in the case of an individual or on Form 1118 in the case of a corporation. The form shall be attached to the appropriate income tax return for the taxable year to which such election applies. Such election may be made, however, only for a taxable year for which the taxpayer chooses to claim a credit under section 901. If the taxpayer revokes the initial election without the consent of the Commissioner, he must file amended Form 1116 or 1118 and amended income tax returns or claims for refund, where applicable, for the taxable years to which the revocation applies. For rules relating to the filing of such forms, see paragraph (a) of § 1.905–2.

(3) *Method of revoking an election and making a new election.* A request to revoke an election of the overall limitation under section 904(b) when such revocation requires the consent of the Commissioner, or to make a new election when such election requires the consent of the Commissioner, shall be in writing and shall be addressed to the Commissioner of Internal Revenue, Washington, D.C., 20224. The request shall include the name and address of the taxpayer and shall be signed by the taxpayer or his duly authorized representative. It must specify the taxable year for which the revocation or new election is to be effective and shall be mailed within 75 days after the close of the first taxable year for which it is desired to make the change. It must be accompanied by a statement specifying the nature of the taxpayer's business, the countries in which the business is carried on, or expected to be carried on, within the taxable year of the requested change, and grounds considered as justifying the requested revocation or new election. The Commissioner may require such other information as may be necessary in order to determine whether the proposed change will be permitted. Generally, a request for consent to revoke an election or make a new election will be granted if the basic nature of the taxpayer's business changes or if there are changes in conditions in a foreign country which substantially affect the taxpayer's business. For example, a taxpayer who enters substantial operations in a new foreign country or who loses existing investment due to nationalization, expropriation, or war would be granted consent to revoke an election or make a new election.

(e) *Joint return*—(1) *General.* In the case of a husband and wife making a joint return, the applicable limitation prescribed by section 904(a) on the credit for taxes paid or accrued to foreign countries and possessions of the United States shall be applied with respect to the aggregate taxable income from sources within each such country or possession, or from sources without the United States, as the case may be, and the aggregate taxable income from all sources, of the spouses.

(2) *Electing the overall limitation.* If a husband and wife make a joint return for the current taxable year, but made a separate return for the preceding taxable year and the overall limitation applied for such preceding taxable year to one spouse or to both spouses (whether or not then married), then, unless revoked with the consent of the Commissioner, the overall limitation shall apply for the current taxable year and for subsequent taxable years of both spouses, whether or not they remain married, whether or not joint returns are filed for such subsequent taxable years, and whether or not one of such spouses could have elected the overall limitation for the current taxable year only with the consent of the Commissioner if he had filed a separate return for such year.

PAR. 7. There are added immediately after § 1.904–1 the following two new sections:

§ 1.904–2 Carryback and carryover of unused foreign tax.

(a) *Credit for foreign tax carryback or carryover.* A taxpayer who chooses to claim a credit under section 901 for a taxable year is allowed a credit under that section not only for taxes otherwise allowable as a credit but also for taxes deemed paid or accrued in that year as a result of a carryback or carryover of an unused foreign tax under section 904(d). However, the taxes so deemed paid or accrued shall not be allowed as a deduction under section 164(a). The following paragraphs of this section provide rules for the computation of carryovers and carrybacks under section 904(d).

(b) *Years to which carried*—(1) *General.* If the taxpayer chooses the benefits of section 901 for a taxable year beginning after December 31, 1957, any unused foreign tax (as defined in subparagraph (2) of this paragraph) for such year shall, under section 904(d), be carried to the second preceding taxable year, the first preceding taxable year, and the first, second, third, fourth, and fifth succeeding taxable years, in that order and to the extent not absorbed as taxes deemed paid or accrued, under paragraph (c) of this section, in a prior taxable year. The entire unused foreign tax for any taxable year shall first be carried to the earliest of the taxable years to which, under the preceding sentence, such unused foreign tax may be carried. Any portion of such unused foreign tax not deemed paid or accrued under paragraph (c) of this section in such earliest taxable year shall then be carried to the next earliest taxable year to which such unused foreign tax may be carried, and any portion not absorbed in that year shall then be carried to the next earliest year, and so on.

(2) *Definitions.* (i) When used with reference to a taxable year for which the per-country limitation provided in section 904(a)(1) applies, the term "unused foreign tax" means, with respect to a particular foreign country or possession of the United States, the excess of (*a*) the income, war profits, and excess profits taxes paid or accrued (or deemed paid or accrued other than by reason of section 904(d)) in such year to such foreign country or possession, over (*b*) the applicable per-country limitation under section 904(a)(1) for such year.

(ii) When used with reference to a taxable year for which the overall limitation provided in section 904(a)(2) applies, the term "unused foreign tax" means the excess of (*a*) the income, war profits, and excess profits taxes paid or accrued (or deemed paid or accrued other than by reason of section 904(d)) in such year to all foreign countries and possessions of the United States, over (*b*) the overall limitation under section 904(a)(2) for such year.

(3) *Taxable years beginning before January 1, 1958.* For purposes of this paragraph, the terms "second preceding taxable year" and "first preceding taxable year" do not include any taxable year beginning before January 1, 1958.

(c) *Tax deemed paid or accrued*—(1) *Unused foreign tax for per-country limitation year.* (i) The amount of an unused foreign tax with respect to a particular foreign country or possession of the United States, for a taxable year for which the per-country limitation under section 904(a)(1) applies, which shall be deemed paid or accrued in any taxable year to which such unused foreign tax may be carried under paragraph (b) of this section shall, except as provided in subdivision (iii) of this subparagraph, be equal to the smaller of—

(*a*) The portion of such unused foreign tax which, under paragraph (b) of this section, is carried to such taxable year, or

(*b*) Any excess limitation for such taxable year with respect to such unused foreign tax (as determined under subdivision (ii) of this subparagraph).

(ii) The excess limitation for any taxable year (hereinafter called the "excess limitation year") with respect to an unused foreign tax in respect of a particular foreign country or possession of the United States for another taxable year (hereinafter called the "year of origin") shall be the amount, if any, by which the limitation for the excess limitation year with respect to that foreign country or possession (computed under section 904(a)(1)) exceeds the sum of—

(*a*) The income, war profits, and excess profits taxes actually paid or accrued to such foreign country or possession in the excess limitation year,

(*b*) The income, war profits, and excess profits taxes deemed paid or accrued in such year to such foreign country or possession other than by reason of section 904(d), and

(c) The portion of the unused foreign tax, with respect to such foreign country or possession for any taxable year earlier than the year of origin, which is absorbed as taxes deemed paid or accrued in the excess limitation year under subdivision (i) of this subparagraph.

(iii) An unused foreign tax for a taxable year for which the per-country limitation provided in section 904(a)(1) applies shall not be deemed paid or accrued in a taxable year for which the overall limitation provided in section 904(a)(2) applies, notwithstanding that under paragraph (b) of this section such overall limitation year is counted as one of the years to which such unused foreign tax may be carried.

(iv) Any portion of an unused foreign tax with respect to a particular foreign country or possession of the United States which is deemed paid or accrued under section 904(d) in the year to which it is carried shall be deemed paid or accrued to the same foreign country or possession to which such foreign tax was paid or accrued (or deemed paid or accrued other than by reason of section 904(d)) for the year in which it originated.

(v) For determination of excess limitation for a year for which the taxpayer does not choose to claim a credit under section 901, see paragraph (d) of this section.

(2) *Unused foreign tax for overall limitation year.* (i) The amount of an unused foreign tax with respect to all foreign countries and possessions of the United States, for a taxable year for which the overall limitation provided in section 904(a)(2) applies, which shall be deemed paid or accrued in any taxable year to which such unused foreign tax may be carried under paragraph (b) of this section shall, except as provided in subdivision (iii) of this subparagraph, be equal to the smaller of—

(a) The portion of such unused foreign tax which, under paragraph (b) of this section is carried to such taxable year, or

(b) Any excess limitation for such taxable year with respect to such unused foreign tax (as determined under subdivision (ii) of this subparagraph).

(ii) The excess limitation for any taxable year (hereinafter called the "excess limitation year") with respect to an unused foreign tax in respect of all foreign countries and possessions of the United States for another taxable year (hereinafter called the "year of origin") shall be the amount, if any, by which the limitation for the excess limitation year with respect to all foreign countries and possessions of the United States (computed under section 904(a)(2)) exceeds the sum of—

(a) The income, war profits, and excess profits taxes actually paid or accrued to all foreign countries and possessions in the excess limitation year,

(b) The income, war profits, and excess profits taxes deemed paid or accrued in such year to all foreign countries and possessions other than by reason of section 904(d), and

(c) The portion of the unused foreign tax, with respect to all foreign countries and possessions for any taxable year earlier than the year of origin, which is absorbed as taxes deemed paid or accrued in the excess limitation year under subdivision (i) of this subparagraph.

(iii) An unused foreign tax for a taxable year for which the overall limitation provided in section 904(a)(2) applies shall not be deemed paid or accrued in a taxable year for which the per-country limitation provided in section 904(a)(1) applies, notwithstanding that under paragraph (b) of this section such per-country limitation year is counted as one of the years to which such unused foreign tax may be carried.

(iv) For determination of excess limitation for a year for which the taxpayer does not choose to claim a credit under section 901, see paragraph (d) of this section.

(d) *Determination of excess limitation for certain years.* An excess limitation for a taxable year may exist, and may absorb all or some portion of an unused foreign tax, even though the taxpayer does not choose to claim a credit under section 901 for such year. In such case, the amount of the excess limitation, if any, for such year (hereinafter called the "deduction year") shall be determined in the same manner as through the taxpayer had chosen to claim a credit under section 901 for that year. For purposes of the preceding sentence—

(1) If the taxpayer has not chosen the benefits of section 901 for any taxable year before the deduction year, the per-country limitation under section 904(a)(1) shall be considered to be applicable for such year, and

(2) If the taxpayer has chosen the benefits of section 901 for any taxable year before the deduction year, the limitation (per-country or overall) applicable for the last taxable year (preceding such deduction year for) which a credit was claimed under section 901 shall be considered to be applicable for such deduction year.

(e) *Periods of less than 12 months.* A fractional part of a year which is a taxable year under sections 441(b) and 7701(a)(23) is a preceding or a succeeding taxable year for the purpose of determining under section 904(d) the years to which the unused foreign tax may be carried, and any unused foreign tax or excess limitation for such fractional part of a year is the unused foreign tax or excess limitation for a taxable year.

(f) *Statement with tax return.* Every taxpayer claiming the benefit of a carryback or carryover of the unused foreign tax to any taxable year for which he chooses to claim a credit under section 901 shall file with his return (or with his claim for refund, if appropriate) for that year as an attachment to his Form 1116 or 1118, as the case may be, a statement setting forth the unused foreign tax deemed paid or accrued under this section and all material and pertinent facts relative thereto, including a detailed schedule showing the computation of the unused foreign tax so carried back or over.

(g) *Illustration of carrybacks and carryovers.* The application of this section may be illustrated by the following examples:

Example (1). (i) A, a calendar year taxpayer using the cash receipts and disbursements method of accounting, chooses to claim a credit under section 901 for each of the taxable years set forth below. Based upon the taxes actually paid to country X, and the section 904(a)(1) limitation applicable in respect of country X, in each of the taxable years, the unused foreign tax deemed paid under section 904(d) in each of the appropriate taxable years is as follows:

	Taxable years								
	1958	1959	1960	1961	1962	1963	1964	1965	1966
Per-country limitation	$175	$150	$100	$100	$100	$300	$400	$200	$600
Taxes actually paid to country X in taxable year	75	60	830	170	150	100	200	140	400
Unused foreign tax to be carried back or over from year of origin			730	70	50				
Excess limitation with respect to unused foreign tax for—									
1960	(100)	(90)				(200)	(200)	(60)	
1961									(200)
1962									(130)
Unused foreign tax absorbed as taxes deemed paid under the carryback and carryover provisions as carried from—									
1960	100	90				200	200	60	
1961									70
1962									50

(ii) The excess limitation for 1958, 1959, 1963, 1964, and 1965, respectively, which is available to absorb the unused foreign tax for 1960 is the amount by which the per-country limitation for each of those years exceeds the taxes actually paid to country X in each such year. The unused foreign tax for 1961 and 1962 are not taken into account, since neither of those years is a year earlier than 1960, the year of origin in respect of which the excess limitation is being determined. Thus, for example, the excess limitation for 1963 is $200, unreduced by the unused foreign tax for 1961 and 1962. There is no excess limitation for 1966 with respect to the unused foreign tax for 1960, since the unused foreign tax may be carried forward only 5 taxable years. The unused foreign tax ($730) for 1960 is thus absorbed as taxes deemed paid to the extent of the excess limitation for each of the taxable years 1958, 1959, 1963, 1964, and 1965, respectively, and in that order, leaving unused foreign tax in the amount of $80 which cannot be absorbed because it cannot be carried beyond 1965.

(iii) The amount of unused foreign tax for 1961 which is deemed paid in 1966 is $70, the smaller of (a) that portion of the unused foreign tax carried to 1966 ($70), or (b) the excess limitation for 1966 with respect to such unused foreign tax ($200). The unused foreign tax for 1962 ($50) is not taken into account for such purposes, since that year is not a year earlier than 1961, the

year of origin in respect of which the excess limitation for 1966 is being determined.

(iv) The excess limitation for 1966 with respect to the unused foreign tax for 1962 is $130, the amount by which the limitation applicable under section 904(a)(1) for 1966 ($600) exceeds the sum of the taxes actually paid ($400) to country X in that year and the unused foreign tax ($70) for 1961 which is absorbed in 1966 as taxes deemed paid and which is carried from a taxable year earlier than 1962, the year of origin in respect of which the excess limitation is being determined. The unabsorbed part ($80) of the unused foreign tax for 1960, a year earlier than 1962, is not taken into account in computing the excess limitation for 1966, since the unused foreign tax for 1960 may not be carried beyond 1965. The unused foreign tax ($50) for 1962 is thus absorbed in full in 1966 as taxes deemed paid, since the unused foreign tax does not exceed the excess limitation ($130) for that year.

Example (2). Assume the same facts as those in example (1) except that the taxpayer does not choose to have the benefits of section 901 for 1961. In that case there is not unused foreign tax for that year to carry back or over to be absorbed in other taxable years as taxes deemed paid. Moreover, the excess limitation for 1966 which is available to absorb the unused foreign tax for 1962 is $200, instead of $130, that is, the amount by which the limitation applicable under section 904(a)(1) for 1966 ($600) exceeds the taxes actually paid ($400) to country X in that year. The amount of the unused foreign tax absorbed in each taxable year as taxes deemed paid is the same as in example (1) except for 1966. In that year only the unused foreign tax ($50) for 1962 is absorbed as taxes deemed paid.

Example (3). Assume the same facts as those in example (1) except that the taxpayer does not choose the benefits of section 901 for 1959. Since the excess limitation for a taxable year for which the taxpayer does not claim a credit under section 901 is determined in the same manner as though the taxpayer had chosen such credit, the excess limitation for 1959 is determined to be $90 just as in example (1). Moreover, even though such excess limitation absorbs a carryback of $90 from the unused tax for 1960, none of such $90 so deemed paid in 1959 is allowed as a deduction under section 164 or as a credit under section 901 for 1959 or for any other taxable year.

Example (4). (i) B, a calendar year taxpayer using the cash receipts and disbursements methods of accounting, chooses the benefits of section 901 for each of the taxable years 1957, 1958, and 1959. Based upon the taxes actually paid to country Y and the per-country limitation applicable with respect to country Y, in each of the taxable years, the unused foreign tax deemed paid under section 904(d) for taxable year 1959 is as follows:

	Taxable years		
	1957	1958	1959
Per-country limitation on credit for taxes paid to Y	$300	$200	$250
Taxes actually paid to Y in taxable year	200	300	150
Unused foreign tax to be carried back or over from year of origin	------	100	------
Excess limitation applicable to unused credit	------	------	(100)
Unused foreign tax absorbed as taxes deemed paid	------	------	100

(ii) Since a taxable year beginning before January 1, 1958, cannot constitute a preceding taxable year in which the unused foreign tax for 1958 may be absorbed as taxes deemed paid, the entire unused foreign tax ($100) is absorbed as taxes deemed paid in 1959.

Example (5). (i) C, a calendar year taxpayer using an accrual method of accounting, accrues foreign taxes for the first time in 1961. C chooses the benefits of section 901 for each of the taxable years set forth below and for 1962 elects the overall limitation provided by section 904(a)(2) which, with the Commissioner's consent, is revoked for 1966. Based upon the taxes actually accrued with respect to foreign countries X and Y for each of the taxable years, the unused foreign tax deemed accrued under section 904(d) in the appropriate taxable years is as follows:

	Per country	Overall	Overall	Overall	Overall	Per country
Taxable years	1961	1962	1963	1964	1965	1966
Limitation:						
Country X	$175	------	------	------	------	$290
Country Y	125	------	------	------	------	95
Overall	------	$250	$800	$300	$400	------
Taxes actually accrued:						
Country X	325	------	------	------	------	200
Country Y	85	------	------	------	------	100
Aggregate	------	350	380	425	450	------
Unused foreign tax to be carried back or over from year of origin:						
Country X	150	------	------	------	------	------
Country Y	------	------	------	------	------	------
Aggregate	------	100	------	125	50	5
Excess limitation:						
Country X	------	------	------	------	------	------
Country Y	40	------	------	------	------	90
Overall	------	------	420	------	------	------
Unused foreign tax absorbed as taxes deemed accrued under section 904(d) and carried from—						
1961 (Country X)	------	------	------	------	------	(90)
1962 (Overall)	------	------	(100)	------	------	------
1964 (Overall)	------	------	(125)	------	------	------
1965 (Overall)	------	------	(50)	------	------	------

(ii) Since the per-country limitation is applicable for 1961 and 1966 only, any unused foreign tax with respect to such years may not be deemed accrued in 1962, 1963, 1964, or 1965, years for which the overall limitation applies. However, the excess limitation for 1966 with respect to country X ($90) is available to absorb a part of the unused foreign tax for 1961 with respect to country X. The difference with respect to country X between the unused foreign tax for 1961 ($150) and the amount absorbed as taxes deemed accrued ($90) in 1966, or $60, may not be carried beyond 1966 since the unused foreign tax may be carried forward only 5 taxable years. There is no excess limitation with respect to country Y for 1961 in respect of the unused foreign tax of country Y for 1966, since the unused foreign tax may be carried back only 2 taxable years.

(iii) Since the overall limitation is applicable for 1962, 1963, 1964, and 1965, any unused foreign tax with respect to such years may not be absorbed as taxes deemed accrued in 1961 or 1966, years for which the per-country limitation applies. However, the excess limitation for 1963 ($420) computed on the basis of the overall limitation is available to absorb the unused foreign tax for 1962 ($100), the unused foreign tax for 1964 ($125), and the unused foreign tax for 1965 ($50), leaving an excess limitation above such absorption of $145 ($420—$275).

§ 1.904–3 Carryback and carryover of unused foreign tax by husband and wife.

(a) *In General.* This section provides rules, in addition to those prescribed in § 1.904–2, for the carryback and carryover of the unused foreign tax paid or accrued to a foreign country or possession by a husband and wife making a joint return for one or more of the taxable years involved in the computation of the carryback or carryover.

(b) *Joint unused foreign tax and joint excess limitation.* In the case of a husband and wife the joint unused foreign tax or the joint excess limitation for a taxable year for which a joint return is made shall be computed on the basis of the combined income, deductions, taxes, and credit of both spouses as if the combined income, deductions, taxes, and credit were those of one individual.

(c) *Continuous use of joint return.* If a husband and wife make a joint return for the current taxable year, and also make joint returns for each of the other taxable years involved in the computation of the carryback or carryover of the unused foreign tax to the current taxable year, the joint carryback or the joint carryover to the current taxable year shall be computed on the basis of the joint unused foreign tax and the joint excess limitations.

(d) *From separate to joint return.* If a husband and wife make a joint return for the current taxable year, but make separate returns for all of the other taxable years involved in the computation of the carryback or carryover of the unused foreign tax to the current taxable year, the separate carrybacks or separate carryovers shall be a joint carryback or a joint carryover to the current taxable year. If for such current year the per-country limitation applies, then only the unused foreign tax for a taxable year of a spouse for which the per-country limitation applied to such spouse may constitute a carryover or carryback to the current taxable year. If for such current taxable year the overall limitation applies, then only the unused foreign tax for a taxable year of a spouse for which the overall limitation applied to such spouse may constitute a carryover or carryback to the current taxable year.

(e) *Amounts carried from or through a joint return year to or through a separate return year.* It is necessary to allocate to each spouse his share of an unused foreign tax or excess limitation for any taxable year for which the spouses filed a joint return if—

(1) The husband and wife file separate returns for the current taxable year and an unused foreign tax is carried thereto from a taxable year for which they filed a joint return;

(2) The husband and wife file separate returns for the current taxable year and an unused foreign tax is carried to such taxable year from a year for which they filed separate returns but is first carried through a year for which they filed a joint return; or

(3) The husband and wife file a joint return for the current taxable year and an unused foreign tax is carried from a taxable year for which they filed joint returns but is first carried through a year for which they filed separate returns.

In such cases, the separate carryback or carryover of each spouse to the current taxable year shall be computed in the manner described in § 1.904–2 but with the modifications set forth in paragraph (f) of this section.

(f) *Allocation of unused foreign tax and excess limitation*—(1) *Limitation*—(i) *Per-country limitation.* The per-country limitation of a particular spouse with respect to a foreign country or United States possession for a taxable year for which a joint return is made shall be the portion of the limitation on the joint return which bears the same ratio to such limitation as such spouse's taxable income (with gross income and deductions taken into account to the same extent as taken into account on the joint return) from sources within such country or possession (but not in excess of the joint taxable income from sources within such country or possession) bears to the joint taxable income from such sources.

(ii) *Overall limitation.* The overall limitation of a particular spouse for a taxable year for which a joint return is made shall be the portion of the limitation on the joint return which bears the same ratio to such limitation as such spouse's taxable income (with gross income and deductions taken into account to the same extent as taken into account on the joint return) from sources without the United States (but not in excess of the joint taxable income from such sources) bears to the joint taxable income from such sources.

(2) *Unused foreign tax*—(i) *Per-country limitation.* The unused foreign tax of a particular spouse with respect to a foreign country or United States possession for a taxable year for which a joint return is made shall be the excess of his tax paid or accrued to such country or possession over his limitation determined under subparagraph (1)(i) of this paragraph.

(ii) *Overall limitation.* The unused foreign tax of a particular spouse for a taxable year to which the overall limitation applies and for which a joint return is made shall be the excess of his tax paid or accrued to foreign countries and United States possessions over his limitation determined under subparagraph (1)(ii) of this paragraph.

(3) *Excess limitation*—(i) *Per-country limitation taxpayer.* A spouse's excess limitation with respect to a foreign country or possession for a taxable year for which a joint return is made shall be the excess of his limitation determined under subparagraph (1)(i) of this paragraph over his taxes paid or accrued to such country or possession for such taxable year.

(ii) *Overall limitation.* A spouse's excess limitation for a taxable year to which the overall limitation applies and for which a joint return is made shall be the excess of his limitation determined under subparagraph (1)(ii) of this paragraph over his taxes paid or accrued to foreign countries and United States possessions for such taxable year.

(4) *Excess limitation to be applied.* The excess limitation of the particular spouse for any taxable year which is applied against the unused foreign tax of that spouse for another taxable year in order to determine the amount of the unused foreign tax which shall be carried back or over to a third taxable year shall be, in a case in which the excess limitation is determined on a joint return, the sum of the following amounts:

(i) Such spouse's excess limitation determined under subparagraph (3) of this paragraph reduced as provided in subparagraph (5)(i) of this paragraph, and

(ii) The excess limitation of the other spouse determined under subparagraph (3) of this paragraph for that taxable year reduced as provided in subparagraph (5) (i) and (ii) of this paragraph.

(5) *Reduction of excess limitation.* (i) The part of the excess limitation which is attributable to each spouse for the taxable year, as determined under subparagraph (3) of this paragraph, shall be reduced by absorbing as taxes deemed paid or accrued under section 904(d) in that year the unabsorbed separate unused foreign tax of such spouse, and the unabsorbed unused foreign tax determined under subparagraph (2) of this paragraph of such spouse, for taxable years which begin before the beginning of the year of origin of the unused foreign tax of the particular spouse against which the excess limitation so determined is being applied.

(ii) In addition, the part of the excess limitation which is attributable to the other spouse for the taxable year, as determined under subparagraph (3) of this paragraph, shall be reduced by absorbing as taxes deemed paid or accrued under section 904(d) in that year the unabsorbed unused foreign tax, if any, of such other spouse for the taxable year which begins on the same date as the beginning of the year of origin of the unused foreign tax of the particular spouse against which the excess limitation so determined is being applied.

(6) *Spouses using different limitations.* If an unused foreign tax is carried through a taxable year for which spouses made a joint return and the credit under section 901 for such taxable year is not claimed, and in the prior taxable year separate returns are made in which the per-country limitation applies to one spouse and the overall limitation applies to the other spouse, the amount treated as absorbed in the taxable year for which a joint return is made—

(i) With respect to the spouse for which the per-country limitation applies shall be determined on the basis of the excess limitation which would be allocated to such spouse under subparagraph (3)(i) of this paragraph had the per-country limitation applied for such year to both spouses;

(ii) With respect to the other spouse for which the overall limitation applies shall be determined on the basis of the excess limitation which would be allocated to such spouse under subparagraph (3)(ii) of this paragraph had the overall limitation applied for such year to both spouses.

This subparagraph shall be applied without regard to subparagraph (4)(ii) of this paragraph.

(g) *Illustrations.* This section may be illustrated by the following examples:

Example (1). (a) H and W, calendar year taxpayers, file joint returns for 1961 and 1963, and separate returns for 1962, 1964, and 1965; and for each of those taxable years they choose to claim a credit under section 901. For the taxable years involved, they had unused foreign tax, excess limitations, and carrybacks and carryovers of unused foreign tax as set forth below. The overall limitation applies to both spouses for all taxable years involved in this example. Neither H nor W had an unused foreign tax or excess limitation for any year before 1961 or after 1965. For purposes of this example, any reference to an excess limitation means such a limitation as determined under paragraph (c)(2)(ii) of § 1.904–2 but without regard to any taxes deemed paid or accrued under section 904(d):

Taxable year	1961	1962	1963	1964	1965
Return	Joint	Separate	Joint	Separate	Separate
H's unused foreign tax to be carried over or back, or excess limitation (enclosed in parentheses)	$500	$250	($650)	$400	($500)
W's unused foreign tax to be carried over or back, or excess limitation (enclosed in parentheses)	300	(200)	(300)	150	(100)
Total	800		(950)		
Carryovers absorbed:					
W's, from 1961		[1] 200W	100W		
H's, from 1961			[2] 500H		
H's, from 1962			150H		
			100W		
W's, from 1964					50W
H's, from 1964					400H
Carrybacks absorbed:					
W's, from 1964		0	100W		
H's, from 1964			0		

[1] W—absorbed by W's excess limitation.
[2] H—absorbed by H's excess limitation.

(b) Two hundred dollars of the $300 constituting W's part of the joint unused foreign tax for 1961 is absorbed by her separate excess limitation of $200 for 1962, and the remaining $100 of such part is absorbed by her part ($300) of the joint excess limitation for 1963. The excess limitation of $300 for 1963 is not required first to be reduced by any amount, since neither H nor W has any unused foreign tax for taxable years beginning before 1961.

(c) H's part ($500) of the joint unused foreign tax for 1961 is absorbed by his part ($650) of the joint excess limitation for 1963. The excess limitation of $650 for 1963 is not required first to be reduced by any amount, since neither H nor W has any unused foreign tax for taxable years beginning before 1961.

(d) H's unused foreign tax of $250 for 1962 is first absorbed (to the extent of $150) by H's part of the joint excess limitation for 1963, which must first be reduced from $650 to $150 by the absorption as taxes deemed paid or accrued in 1963 of H's unused foreign tax of $500 for 1961, which is a taxable year beginning before 1962. The remaining part ($100) of H's unused foreign tax for 1962 is then absorbed by W's part of the joint excess limitation for 1963, which must first be reduced from $300 to $200 by the absorption as taxes deemed paid or accrued in 1963 of the unabsorbed part ($100) of W's unused foreign tax for 1961, which is a taxable year beginning before 1962.

(e) W's unused foreign tax of $150 for 1964 is first absorbed (to the extent of $100) by W's part of the joint excess limitation for 1963, which must first be reduced from $300 to $100 by the absorption as taxes deemed paid or accrued in 1963 of the unabsorbed part ($100) of W's unused foreign tax for 1961 and the unabsorbed part ($100) of H's unused foreign tax for 1962, which are taxable years beginning before 1964. No part of W's unused foreign tax for 1964 is absorbed by H's part of the joint excess limitation for 1963, since H's part of that excess must first be reduced from $650 to $0 by the absorption as taxes deemed paid or accrued in 1963 of H's unused foreign tax of $500 for 1961 and of the unabsorbed part ($150) of H's unused foreign tax for 1962, which are taxable years beginning before 1964. The unabsorbed part ($50) of W's unused foreign tax for 1964 is then absorbed by W's excess limitation of $100 for 1965. No part of W's unused foreign tax for 1964 is absorbed by W's excess limitation for 1962, since that excess limitation must first be reduced from $200 to $0 by W's unused foreign tax for 1961, which is a taxable year begining before 1964.

(f) No part of H's unused foreign tax of $400 for 1964 is absorbed by H's part of the joint excess limitation for 1963, since H's part of that excess must first be reduced from $650 to $0 by the absorption as taxes deemed paid or accrued in 1963 of H's unused foreign tax of $500 for 1961 and of a part ($150) of H's unused foreign tax for 1962, which are taxable years beginning before 1964. Moreover, no part of H's unused foreign tax of $400 for 1964 is absorbed by W's part of the joint excess limitation for 1963, since W's part of that excess must first be reduced from $300 to $0 by the absorption as taxes deemed paid or accrued in 1963 of the unabsorbed part ($100) of W's unused foreign tax for 1961 and of the unabsorbed part ($100) of H's unused foreign tax for 1962, which are taxable years beginning before 1964, and also by the absorption of a part ($100) of W's unused foreign tax of $150 for 1964, which is a taxable year beginning on the same date as the beginning of H's taxable year 1964. The unabsorbed part ($400) of H's unused foreign tax for 1964 is then absorbed by H's excess limitation of $500 for 1965.

Example (2). (a) Assume the same facts as those in example (1) except that for 1964 W's unused foreign tax is $20, instead of $150. The carrybacks and carryovers absorbed are the same as in example (1) except as indicated in paragraphs (b) and (c) of this example.

(b) No part of W's unused foreign tax of $20 for 1964 is absorbed by W's excess limitation for 1962, since that excess must first be reduced from $200 to $0 by W's unused foreign tax for 1961, which is a taxable year beginning before 1964. W's unused foreign tax of $20 for 1964 is absorbed by W's part of the joint excess limitation for 1963, which must first be reduced from $300 to $100 by the absorption as taxes deemed paid or accrued in 1963 of the unabsorbed part ($100) of W's unused foreign tax for 1961 and the unabsorbed part ($100) of H's unused foreign tax for 1962, which are taxable years beginning before 1964.

(c) For the reason given in paragraph (f) of example (1), no part of H's unused foreign tax of $400 for 1964 is absorbed by H's part of the joint excess limitation for 1963. H's unused foreign tax of $400 for 1964 is first absorbed (to the extent of $80) by W's part of the joint excess limitation for 1963, which must first be reduced from $300 to $80 by the absorption as taxes deemed paid or accrued in 1963 of the unabsorbed part ($100) of W's unused foreign tax for 1961 and of the unabsorbed part ($100) of H's unused foreign tax for 1962, which are taxable years beginning before 1964, and also by the absorption of W's unused foreign tax of $20 for 1964, which is a taxable year beginning on the same date as the beginning of H's taxable year 1964. The unabsorbed part ($320) of H's unused foreign tax for 1964 is then absorbed by H's excess limitation of $500 for 1965.

Example (3). The facts are the same as in example (1) except that the per-country limitation applies to both spouses for all taxable years involved in the example and that excess limitations and the unused foreign taxes relate to a single foreign country. The carryovers and carrybacks are the same as in example (1).

PAR. 8. Section 1.905–2 is amended by revising subparagraph (2) of paragraph (a) to read as follows:

§ 1.905–2 Conditions of allowance of credit.

(a) *Forms and information.* * * *

(2) The form must be carefully filled in with all the information called for and with the calculations of credits indicated. Except where it is established to the satisfaction of the district director that it is impossible for the taxpayer to furnish such evidence, the form must have attached to it (i) the receipt for each such tax payment if credit is sought for taxes already paid, or (ii) the return on which each such accrued tax was based if credit is sought for taxes accrued. This receipt or return so attached must be either the original, a duplicate original, a duly certified or authenticated copy, or a sworn copy. In case only a sworn copy of a receipt or return is attached, there must be kept readily available for comparison on request the original, a duplicate original, or a duly certified or authenticated copy. If the receipt or the return is in a foreign language, a certified translation thereof must be furnished by the taxpayer. Any additional information necessary for the determination under part I (section 861 and following), subchapter N, chapter 1 of the Code, of the amount of income derived from sources without the United States and from each foreign country shall, upon the request of the district director, be furnished by the taxpayer.

* * * * *

(Sec. 7805, Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805)

[F.R. Doc. 64–13460; Filed, Dec. 30, 1964; 8:45 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

[Circular No. 2178]

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

PART 2230—SPECIAL USES

Subpart 2235—Leases

PART 2320—INTERIOR DEPARTMENT

Subpart 2321—Bureau of Land Management

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

PART 3130—COAL LEASES, PERMITS AND LICENSES

Subpart 3131—General Provisions

PART 3210—ACQUIRED LANDS LEASING ACT

Subpart 3212—Lease Requirements

PART 3220—LEASING UNDER THE REORGANIZATION ACT AND OTHER ACTS

Subpart 3220—Leasing Under the Reorganization Act and Other Acts; General

PART 3630—AREAS SUBJECT TO SPECIAL MINING LAWS

Subpart 3635—Papago Indian Reservation

SUBCHAPTER D—RANGE MANAGEMENT (4000)

PART 4130—GRAZING ADMINISTRATION (ALASKA)

Subpart 4131—Grazing Leases

The purpose of this amendment is to correct those editorial omissions or errors that occurred in the conversion to the new format of the regulations of the Bureau of Land Management, published in the FEDERAL REGISTER on March 31, 1964, which cannot be corrected except through the rule making process.

These rules relate to agency procedure and are not required by law to be published as proposed rule making. This Department, nevertheless, customarily gives such notice and public procedure thereon. However, that practice is deemed unnecessary in this instance because the changes involved are editorial in nature. Accordingly, these rules shall become effective upon the date of publication in the FEDERAL REGISTER.

1. Section 2235.1–1(m) and (n) revised to read as follows:

§ 2235.1–1 Airport and aviation fields—Act of May 24, 1928.

* * * * *

(m) *Beacon lights.* Government department and agencies operating aircraft may be granted permission to establish beacon lights and other navigation facilities, except terminal airports, on tracts of unreserved and unappropriated public lands of the United States of appropriate size, on application therefor, under the rules and regulations prescribed in § 2235.1–1. However, no rental will be charged. Lands for beacon lights and other navigation facilities may be withdrawn in accordance with the provisions of Part 2310 and § 2321.6 of this chapter.

* * * * *

(n) *Segregation of lands.* The filing in the proper land office of an application for a lease of lands under the act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211), as amended, shall segregate the lands described in the application from all appropriation.

2. A New §§ 2321.6, 2321.6–1, 2321.6–2 are added to Subpart 2321, to read as follows:

§ 2321.6 Terminal airports, beacon lights and other navigation facilities.

§ 2321.6–1 General.

(a) *Authority.* (1) The act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211), as amended, authorizes the Secretary of the Interior to withdraw lands for beacon lights and other air-navigation facilities, under such rules as he may prescribe.

(2) Under the authority given to the President by the act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141, 16 U.S.C. 471) to withdraw lands for public purposes, withdrawals may be made for beacon lights, emergency or intermediate landing fields, and terminal airports.

§ 2321.6–2 Procedures.

(a) Withdrawals under the act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211) may be made on motion of the Bureau of Land Management, or upon application of the Federal Aviation Agency or any other Federal agency, or the lessee of a terminal airport or the applicant for such a lease.

(b) To the extent applicable, the procedures in Part 2310 of this chapter shall apply.

(c) In addition to the requirements of Part 2310 of this chapter, all applications for withdrawal shall contain a statement by the authorized officer of the Federal Aviation Agency as to the need and feasibility of the facility for which the withdrawal is requested.

3. Paragraphs (b), (c), and (d) are added to § 3131.1 to read as follows:

§ 3131.1 Acreage limitation.

* * * * *

(b) A person, association, or corporation may file with the Manager of the appropriate land office an application or applications for coal leases or permits for acreage in addition to the 10,240 acres, which application or applications shall be in multiples of 40 acres, not exceeding a total of 5,120 additional acres in any one State, and shall contain a statement that the granting of a lease or permit for such additional lands is necessary to carry on business economically and is in the public interest.

(c) Upon the filing of an application for additional lands as specified in paragraph (b) of this section, the coal deposits in the lands covered thereby shall be temporarily set aside and withdrawn from all forms of disposal under the Act.

(d) All applications filed for additional lands as specified in paragraph (b) of this section shall be posted in the appropriate land office, and the authorized officer shall conduct public hearings thereon. Upon conclusion thereof, he may, in his discretion or whenever sufficient public interest is manifested, reevaluate the lessee's or permittee's need for all or any part of the additional acreage. Thereafter and to the extent necessary for the applicant to carry on business economically, the authorized officer may issue coal leases or permits to the applicant for additional acreage of not more than 5,120 acres (within the aggregate limitation of 2,560 acres in a single lease or permit), subject to such terms and conditions as may be prescribed by the Secretary of the Interior. Such terms and conditions may require the payment either of a cash bonus per acre or fraction thereof or a rental and royalty rate different from that required by the original leases or permits or both.

4. The second paragraph of § 3212.3 (a) is deleted in its entirety so that § 3212.3(a) shall read as follows:

§ 3212.3 Leases of future or fractional interests.

(a) *General.* Subject to the provisions of section 3 of the Act, non-competitive leases for future or fractional interests in lands believed, but not known to contain mineral deposits may be issued whenever the public interest will be best served thereby. There is no required form for applications or offers for non-competitive leases of any mineral subject to the Act, except oil and gas. However, such applications and requests to have leases offered competitively for lands known to contain mineral deposits should, to the extent possible, conform to and include the information required by §§ 3211.2, 3211.3, 3212.1 and this section. The terms and conditions of leases covering future or fractional interests in mineral deposits other than oil and gas, of competitive leases for future or fractional interests in oil and gas deposits within the known geological structure of a producing oil or gas field, and of compensatory royalty agreements under § 3120.3–1 covering future or fractional interests, will be established on an individual case basis.

* * * * *

5. The caption of Part 3220 is amended to read as follows: Part 3220—*Leasing under the Reorganization Act and Other Acts.*

6. The caption of Subpart 3220 is amended to read as follows: Subpart 3220—*Leasing under the Reorganization Act and Other Acts; General.*

7. A new § 3635.0–1, is added to Subpart 3635, to read as follows:

§ 3635.0–1 Purpose.

The regulations in this part apply to entries made prior to May 27, 1955. By virtue of the act of May 27, 1955 (69 Stat. 67; 25 U.S.C. 463) mineral entries may no longer be made within the Papago Indian Reservation.

8. Section 4131.2–4(c) is amended to read as follows:

§ 4132.2–4 Annual rental.

* * * * *

(c) *Payment.* The first rental payment required and the return of the proposed lease duly executed by the prospective lessee shall be made within 30 days of receipt of the lease form by the prospective lessee; if the rental is not paid or the lease is not returned within the prescribed time, the offer shall be null and void and of no effect, and all rights of the prospective lessee thereunder or under the application upon which it is based shall be considered as terminated. Subsequent rental payments for succeeding lease periods are payable in advance. In the event such payment is not received in the proper office by the last day of the current lease period or within the time prescribed in the billing notice whichever is the later, the case shall be considered canceled and all rights terminated thereunder as of the end of such current lease period; except the lease shall not terminate if the lessee submits payment to the proper office within a grace period of sixty days following the last day of the current lease period together with a showing satisfactory to the authorized office that the delay in rental payment was for unavoidable reasons and that termination of the lease would cause undue hardship to the lessee.

STEWART L. UDALL,
Secretary of the Interior.

DECEMBER 30, 1964.

[F.R. Doc. 64–13540; Filed, Dec. 30, 1964; 10:55 a.m.]

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter I—Office of Emergency Planning

[Defense Mobilization Order IX–3]

DMO IX–3—UNITED STATES TELECOMMUNICATION POLICY FOR GOVERNMENT USE OF RADIO FREQUENCIES BELOW 30 MC/S FOR DOMESTIC FIXED SERVICE

Revocation

Defense Mobilization Order IX–3 dated January 13, 1958 providing for United States telecommunication policy for Government use of radio frequencies below 30 Mc/s for domestic fixed service (23 F.R. 297), is revoked effective December 31, 1964.

Dated: December 22, 1964.

EDWARD A. MCDERMOTT,
Director,
Office of Emergency Planning.

[F.R. Doc. 64–13462, Filed, Dec. 30, 1964; 8:45 a.m.]

Title 45—PUBLIC WELFARE

Chapter II—Bureau of Family Services, Welfare Administration, Department of Health, Education, and Welfare

REVISION OF CHAPTER

Chapter II is revised to reflect administrative and legislative changes and for technical reasons. The administrative changes include creation of the Welfare Administration, establishment of the position of Commissioner of Welfare, and the renaming of the Bureau of Family Services. Part 201 is amended to reflect amendments to the Social Security Act providing for medical assistance for the aged under title I, the single category of assistance for the aged, blind, or disabled under title XVI, and authority to provide 75 percent Federal financial participation in the administrative costs of certain social services and training under each of the public assistance titles.

The programs described in Part 201 are subject to such applicable rules, regulations, or orders as may be issued with the approval of the President to effectuate the provisions of section 601 of the Civil Rights Act of 1964 (P.L. 88–352).

Parts 211 and 212 are amended to prohibit discrimination on the basis of race, color, or national origin. In addition, Part 212 is amended to specify the maximum period for which assistance under section 1113 of the Social Security Act may be furnished to U.S. citizens and their dependents returned from foreign countries.

1. The chapter heading for Chapter II of Title 45 is changed to read as set forth above.

2. Chapter II is revised to read as follows:

PART 201—ASSISTANCE TO STATES

AUTHORITY: The provisions of this Part 201 issued under sec. 1102, 49 Stat. 647, as amended; 42 U.S.C. 1302. Interprets or applies titles I, IV, X, XI, XIV, and XVI of the Social Security Act, as amended, 42 U.S.C. 301–306, 601–609, 1201–1206, 1301–1315, 1351–1355, 1381–1385.

§ 201.1 General definitions.

When used in this part:

(a) "Act" means the Social Security Act, as amended, and titles referred to are the titles of that Act;

(b) The term "Department" means the Department of Health, Education, and Welfare;

(c) The term "Commissioner" means the Commissioner of Welfare;

(d) The term "Welfare Administration" means the Welfare Administration in the Department;

(e) The term "Bureau" means the Bureau of Family Services of the Welfare Administration;

(f) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam;

(g) The term "State agency" means the State public assistance agency administering, or supervising the administration of, the public assistance plan under title I, IV, X, XIV, or XVI;

(h) The term "regional office" and "central office" refer to regional offices of the Department and the central office of the Bureau, respectively.

Subpart A—Approval of State Plans for Public Assistance and Certification of Grants

§ 201.2 General.

The State plan is a comprehensive statement prepared by the State agency describing all pertinent aspects of its operations necessary for the Welfare Administration to reach a determination as to conformity with the specific requirements stipulated in the pertinent titles of the Act. The State plan sets forth the basic State laws enabling and limiting the administration of public assistance; a description of the agency's organization and functions; its methods of administration, including the rules and regulations governing personnel administration; policies and interpretations with regard to eligibility for and extent of assistance; a description of its plan for social services and for training of public assistance personnel; fiscal operations; and reporting and research activities. Pertinent Federal policies are set forth in the Handbook of Public Assistance Administration, which also contains detailed instructions and suggestions for the content and submittal of the documents comprising the State public assistance plan. Copies of the Handbook are furnished to each State agency.

§ 201.3 Approval of State plans and amendments.

The State plan consists of written documents furnished by the State to cover each of its programs under the Act: old-age assistance and medical assistance for the aged (title I); aid and services to needy families with children (title IV); aid to the blind (title X); aid to the permanently and totally disabled (title XIV); or aid to the aged, blind, or disabled and medical assistance for the aged (title XVI). The State may submit the common material on more than one program as an integrated plan. However, it must identify the provisions pertinent to each title since a separate plan must be approved under each public assistance title. A plan submitted under title XVI encompasses, under a single plan, the groups otherwise included in the three separate plans under titles I, X, and XIV. After approval of the original plan by the Commissioner, all relevant changes, such as new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that the Commissioner may determine whether the plan continues to meet Federal requirements and policies.

(a) *Submittal.* State public assistance plans and revisions of the plans are submitted to the central office through the regional offices. The States are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(b) *Review.* The family service representatives in the regional offices are responsible for review of State plans and amendments. They also initiate discussion with the State agency on clarification of significant aspects of the plan which come to their attention in the course of this review. State plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for decision. Comments and suggestions, including those of consultants in specified areas of public assistance administration, may be prepared by the central office for use by the regional representatives in negotiations with the State agency.

(c) *Approval.* The Bureau has been delegated authority to take action on amendments to State plans on the basis of policy statements or precedents previously approved by the Commissioner; the Commissioner has final authority for approval of new or substantially rewritten plans, or amendments to plans that are not within established policy. The Commissioner also has final authority for determining that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval. The Bureau formally notifies the State agency of the action taken on State plans or revisions, or the need for clarifying information.

(d) *Basis for approval.* Determinations as to whether State plans (including plan amendments and administrative practice under the plans) originally meet, or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations and the requirements and policies set forth in the Handbook of Public Assistance Administration and other official issuances to the States.

§ 201.4 Grants.

To States with approved plans, grants are made each quarter for assistance and administration. The determination as to the amount of a grant to be made to a State is based upon three documents submitted by the State agency containing information required under the Act and such other pertinent facts as may be found necessary.

(a) *Form and manner of submittal—*(1) *Time and place.* The estimates for public assistance grants for each quarterly period are forwarded to the re-

gional office 45 days prior to the period of the estimate, together with a certification of State funds available and a justification statement in support of the estimates. The statement of quarterly expenditures and any necessary supporting schedules are forwarded to the Department of Health, Education, and Welfare, Bureau of Family Services, Attention: State Grants Branch, Washington, D.C., 20201, not later than 30 days after the end of the quarter.

(2) *Description of forms.* (i) "Report of Estimated Expenditures and Funds to be Available" represents the State agency's estimate of the total amount of expenditures for assistance and for administration to be made during the quarter for each of the public assistance programs under the Act. The forms also contain the State agency's estimates of the number of recipients to receive aid during each month of the quarter and of the amount of money payments to recipients and of the amount of payments to vendors for medical or remedial care in behalf of recipients. From these estimates the State and Federal shares of the total expenditures are computed and reported on the form. The State's computed share of the total estimated expenditures is the amount of State and local funds necessary for the quarter. The Federal share is the basis for the funds to be advanced for the quarter.

(ii) In addition, the State agency must certify as to the amount of State funds (exclusive of any balance of advances received from the Federal Government) actually on hand and available for expenditure; this certification must be signed by the executive officer of the State agency submitting the estimate material, or a person officially designated by him, or by a fiscal officer of the State if required by State law or regulation. ("Certificate of Availability of State funds for Assistance and for Administration during Quarter" is available for submitting the information but is not required to be used.) If the amount of State funds, or State and local funds if localities participate in the program, shown as available for expenditures, is not sufficient to cover the State's proportionate share of the amount estimated to be expended, the certification should contain a statement showing the source from which the amount of the deficiency is expected to be derived and the time when this amount is expected to be made available.

(iii) The third document submitted by the State agency is the quarterly statement of expenditures for each of the public assistance programs under the Act. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditure also shows the share of the Federal Government in any recovery of assistance from recipients and also in expenditures not properly subject to Federal financial participation which are acknowledged by the State agency or have been revealed in the course of the fiscal audit.

(b) *Review.* The State's estimates are analyzed by the regional office staff and are forwarded with recommendations as required to the central office. The central office reviews the State's estimate, other relevant information, and any adjustments to be made for prior periods, and computes the grant.

(c) *Estimate of amount due and certification.* After consideration and approval of the grant request for the quarter by the Commissioner, the amount to be paid to the State is certified (by delegation to certifying officer in the Bureau) to the Secretary of the Treasury for payment for each month of the quarter.

§ 201.5 Withholding certification; reduction of Federal financial participation in the costs of social services and training.

(a) *When withheld.* Certification of grants to a State is withheld if the Commissioner, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of an approved plan, finds:

(1) That the plan has been so changed that it no longer complies with the provisions of section 2, 402, 1002, 1402, or 1602 of the Act; or

(2) That in the administration of the plan there is failure to comply substantially with any such provision.

(b) *When Federal financial participation is reduced.* Federal financial participation in the costs of social services and training approved at the rate of 75 per centum is reduced to 50 per centum if the Commissioner, after reasonable notice and opportunity for hearing to the State agency, finds:

(1) That the plan provision for prescribed services has been so changed that it no longer complies with the Federal requirements with respect to such prescribed services; or

(2) That in the administration of the plan there is a failure to comply substantially with such plan provision.

(c) *Informal discussions.* Hearings with respect to matters under paragraph (a) or (b) of this section are generally not called, however, until after reasonable effort has been made by regional and central office representatives to resolve the questions involved by conference and discussion with State officials. Formal notification of the date and place of hearing does not foreclose further negotiations with State officials.

(d) *Conduct of hearings.* Applicable requirements of the Administrative Procedure Act are observed in conducting the hearings referred to in paragraphs (a) and (b) of this section.

(e) *Notification of noncertification.* If the Commissioner makes a finding of noncompliance with respect to a matter under pargaraph (a) of this section, the State agency is notified that further payments will not be made to the State (or, in the case of a plan approved under title XVI, in his discretion, that payments will be limited to categories under or parts of the plan not affected by such failure), until the Commissioner is satisfied that there will no longer be any such failure to comply. Until he is so satisfied, no further payments will be made to the State (or will be limited to categories under or parts of the title XVI plan not affected by such failure).

(f) *Notification of reduction in Federal financial participation.* If the Commissioner makes a finding of noncompliance with respect to a matter under paragraph (b) of this section, the State agency is notified that further payments will be made to the State at the rate of 50 per centum of the costs of services and training, until the Commissioner is satisfied that there will no longer be any failure to comply.

Subpart B—Review and Audits

§ 201.6 Continuing review of State and local administration.

(a) In order to provide a basis for determining that State agencies are adhering to Federal requirements and to the substantive legal and administrative provisions of their approved plans, the Bureau conducts a continuing review of State and local public assistance administration.

(b) The administrative review includes analysis of procedures and policies of State and local agencies and review of decisions in case records of individual recipients. Each State agency is required to carry out a continuing quality control program primarily covering determination of eligibility in statistically selected samples of individual cases. The Bureau conducts a continuing observation of these State systems. Selected case records and agency operations are also reviewed for evaluating adherence to the other Federal requirements set forth in the pertinent titles of the Act. If the Federal or State review reveals cases in which there appear to have been an improper claim for Federal funds, the State agency is given an opportunity to provide information to substantiate the payment, or to make an adjustment on its expenditure report. If serious problems are revealed in respect to compliance with any Federal requirement, action to adjust Federal funds in all cases affected is required of the State agency, and the State agency is also required to correct its practice so that there will be no recurrence of the problem in the future.

§ 201.7 Personnel merit system review.

A personnel merit system review is carrier out by the Division of State Merit Systems of the Office of Field Administration of the Department. The purpose of the review is to evaluate the effectiveness of the State merit system relating to the public assistance programs and to determine whether there is compliance with Federal requirements in the administration of the merit system plan. See Part 70 of this title.

§ 201.8 Public assistance fiscal audits.

(a) Annually, or at other times as necessary, the State agency's claims for Federal funds and supporting records are audited by the Division of Grant-in-Aid Audits of the Office of Field Administration of the Department to determine that the agency has properly reported its ac-

countability for grants of Federal funds for public assistance; the amounts granted as assistance payments were actually disbursed to or on behalf of individuals who had been determined by the agency to be entitled to public assistance under the appropriate title of the Act; administrative expenditures claimed for Federal financial participation are proper under the Act and State plan, including State laws and regulations; amounts expended and used as the basis for claiming Federal funds under title I, IV, X, XIV, or XVI were not derived from other Federal sources or were not used as a basis for other Federal matching; and the share of the Federal Government in any recovery was accurately and promptly adjusted.

(b) If the audit results in no exceptions, the State agency is advised by letter of this result. The general course for the disposition of proposed exceptions resulting from audits involves the submittal of details of these exceptions to the State agency which then has an opportunity to concur in the proposed exceptions or to assemble and submit additional facts for purposes of clearance. Provision is made for the State agency to appeal proposed audit exceptions in which it has not concurred and which have not been deleted on the basis of clearance material. After consideration of a State agency's appeal by the Commissioner, the Bureau advises the State agency of any expenditures in which the Federal Government may not participate and requests it to include the amount as adjustments in a subsequent statement of expenditures. Expenditures in which it is found the Federal Government may not participate and which are not properly adjusted through the State's claim will be deducted from subsequent grants made to the State agency.

PART 202—MEDICAL ASSISTANCE FOR THE AGED TO STATE RESIDENTS

Sec.

AUTHORITY: The provisions of this Part 202 issued under sec. 601, 74 Stat. 987, sec. 141, 76 Stat. 197, sec. 1102, 49 Stat. 647; 42 U.S.C. 302, 1382, 1302. Interprets or applies sec. 601, 74 Stat. 987, sec. 141, 76 Stat. 197, 42 U.S.C. 302, 1382.

§ 202.1 Condition of plan approval; prohibition against exclusion of residents.

A State plan for medical assistance for the aged, or for old-age assistance and medical assistance for the aged, or a State plan for aid to the aged, blind, or disabled and medical assistance for the aged, to be approved under section 2 or 1602, as the case may be, of the Social Security Act, as amended (42 U.S.C. 302, 1382), may not impose, as a condition of eligibility for medical assistance for the aged, any residence requirement which excludes any individual who resides in the State.

§ 202.2 Furnishing assistance to eligible residents absent from the State.

A State plan referred to in section 202.1 must provide for the furnishing of medical assistance for the aged to eligible individuals who are residents of the State but are absent therefrom to the same extent that such assistance is furnished under the plan to meet the cost of medical care and services rendered to eligible individuals in such State, at least to the extent that medical care and services are needed in any other State (as defined in section 1101(a)(1) of the Social Security Act, as amended, 42 U.S.C. 1301(a)(1)), under any of the following circumstances: (a) Where an emergency arises from accident or sudden illness; (b) where the health of the individual would be endangered if the care and services are postponed until he returns to the State in which he resides; or (c) where his health would be endangered if he undertook travel to return to such State.

PART 211—CARE AND TREATMENT OF MENTALLY ILL NATIONALS OF THE UNITED STATES, RETURNED FROM FOREIGN COUNTRIES

Sec.

AUTHORITY: The provisions of this Part 211 issued under sections 1–11, 74 Stat. 308–310; 24 U.S.C. 321–329.

§ 211.1 General definitions.

When used in this part:

(a) "Act" means Public Law 86–571, approved July 5, 1960, 74 Stat. 308, entitled "An Act to provide for the hospitalization, at Saint Elizabeths Hospital in the District of Columbia or elsewhere, of certain nationals of the United States adjudged insane or otherwise found mentally ill in foreign countries, and for other purposes";

(b) The term "Secretary" means the Secretary of Health, Education, and Welfare;

(c) The term "Department" means the Department of Health, Education, and Welfare;

(d) The term "Director" means the Director of the Bureau of Family Services of the Welfare Administration, Department of Health, Education, and Welfare;

(e) The term "eligible person" means an individual with respect to whom the certificates referred to in section 211.3 are furnished to the Director in connection with the reception of an individual arriving from a foreign country;

(f) The term "Public Health Service" means the Public Health Service in the Department of Health, Education, and Welfare;

(g) The term "agency" means an appropriate State or local public or nonprofit agency with which the Director has entered into arrangements for the provision of care, treatment, and assistance pursuant to the Act;

(h) The term "State" means a State or Territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia;

(i) The term "residence" means residence as determined under the applicable law or regulations of a State or political subdivision for the purpose of determining the eligibility of an individual for hospitalization in a public mental hospital;

(j) The term "legal guardian" means a guardian, appointed by a court, whose powers, duties, and responsibilities include the powers, duties, and responsibilities of guardianship of the person.

§ 211.2 General.

The Director shall make suitable arrangements with agencies to the end that any eligible person will be received, upon request of the Secretary of State, at the port of entry or debarkation upon arrival in the United States from a foreign country and be provided, to the extent necessary, with temporary care, treatment, and assistance, pending transfer and release or hospitalization pursuant to the Act. The Director shall also make suitable arrangements with appropriate divisions of the Public Health Service, Bureau of Medical Services, with Saint Elizabeths Hospital in the District of Columbia, with Federal hospitals outside of the Department, or with other public or private hospitals to provide the eligible person with care and treatment in a hospital. The Director shall maintain a roster setting forth the name and address of each eligible person currently receiving care and treatment, or assistance, pursuant to the Act.

§ 211.3 Certificates.

The following certificates are necessary to establish that an individual is an eligible person:

(a) *Certificates as to nationality.* A certificate issued by an authorized official of the Department of State, stating that the individual is a national of the United States.

(b) *Certificate as to mental condition.* Either (1) a certificate obtained or transmitted by an authorized official of the Department of State that the individual has been legally adjudged insane in a named foreign country; or (2) a certificate of an appropriate authority or person stating that at the time of such certification the individual was in a named foreign country and was in need of care and treatment in a mental hospi-

tal. A statement shall, if possible, be incorporated into or attached to the certificate furnished under this paragraph setting forth all available medical and other pertinent information concerning the individual.

(c) *Appropriate authority or person.* For the purpose of paragraph (b)(2) of this section a medical officer of the Public Health Service or of another agency of the United States, or a medical practitioner legally authorized to provide care or treatment of mentally ill persons in the foreign country, is an "appropriate authority or person," and shall be so identified in his execution of the certificate. If such a medical officer or practitioner is unavailable, an authorized official of the Department of State may serve as an "appropriate authority or person," and shall, in the execution of the certificate, identify himself as serving as such person due to the unavailability of a suitable medical officer or practitioner.

§ 211.4 Notification to legal guardian, spouse, next of kin, or interested persons.

(a) Whenever an eligible person arrives in the United States from a foreign country, or when such person is transferred from one State to another, the Director shall, upon such arrival or transfer (or in advance thereof, if possible), provide for notification of his legal guardian, or in the absence of such a guardian, of his spouse or next of kin, or in the absence of any of these, of one or more interested persons, if known.

(b) Whenever an eligible person is admitted to a hospital pursuant to the Act, the Director shall provide for immediate notification of his legal guardian, spouse, or next of kin, if known.

§ 211.5 Action under State law; appointment of guardian.

Whenever an eligible person is incapable of giving his consent to care and treatment in a hospital, either because of his mental condition or because he is a minor, the agency will take appropriate action under State law, including, if necessary, procuring the appointment of a legal guardian, to ensure the proper planning for and provision of such care and treatment.

§ 211.6 Reception; temporary care, treatment, and assistance.

(a) *Reception.* The agency will meet the eligible person at the port of entry or debarkation, will arrange for appropriate medical examination, and will plan with him, in cooperation with his legal guardian, or, in the absence of such a guardian, with other interested persons, if any, for needed temporary care and treatment.

(b) *Temporary care, treatment, and assistance.* The agency will provide for temporary care, treatment, and assistance, as reasonably required for the health and welfare of the eligible person. Such care, treatment, and assistance may be provided in the form of hospitalization and other medical and remedial care (including services of necessary attendants), food and lodging, money payments, transportation, or other goods and services. The agency will utilize the Public Health Service General Hospital nearest to the port of entry or debarkation or any other suitable public or private hospital, in providing hospitalization and medical care, including diagnostic service as needed, pending other appropriate arrangements for serving the eligible person.

§ 211.7 Transfer and release of eligible person.

(a) *Transfer and release to relative.* If at the time of arrival from a foreign country or any time during temporary or continuing care and treatment the Director finds that the best interests of the eligible person will be served thereby, and a relative, having been fully informed of his condition, agrees in writing to assume responsibility for his care and treatment, the Director shall transfer and release him to such relative. In determining whether his best interest will be served by such transfer and release, due weight shall be given to the relationship of the individuals involved, the financial ability of the relative to provide for such person, and the accessibility to necessary medical facilities.

(b) *Transfer and release to appropriate State authorities, or agency of the United States.* If appropriate arrangements cannot be accomplished under paragraph (a) of this section, and if no other agency of the United States is responsible for the care and treatment of the eligible person, the Director shall endeavor to arrange with the appropriate State mental health authorities of the eligible person's State of residence or legal domicile, if any, for the assumption of responsibility for the care and treatment of the eligible person by such authorities and shall, upon the making of such arrangements in writing, transfer and release him to such authorities. If any other agency of the United States is responsible for the care and treatment of the eligible person, the Director shall make arrangements for his transfer and release to that agency.

§ 211.8 Continuing hospitalization.

(a) *Authorization and arrangements.* In the event that appropriate arrangements for an eligible person in need of continuing care and treatment in a hospital cannot be accomplished under § 211.7, or until such arrangements can be made, care and treatment shall be provided by the Director in Saint Elizabeths Hospital in the District of Columbia, in an appropriate Public Health Service Hospital, or in such other suitable public or private hospital as the Director determines is in the best interests of such person.

(b) *Transfer to other hospital.* At any time during continuing hospitalization, when the Director deems it to be in the interest of the eligible person or of the hospital affected, the Director shall authorize the transfer of such person from one hospital to another and, where necessary to that end, the Director shall authorize the initiation of judicial proceedings for the purpose of obtaining a commitment of such person to the Secretary.

(c) *Place of hospitalization.* In determining the placement or transfer of an eligible person for purposes of hospitalization, due weight shall be given to such factors as the location of the eligible person's legal guardian or family, the character of his illness and the probable duration thereof, and the facilities of the hospital to provide care and treatment for the particular health needs of such person.

§ 211.9 Examination and reexamination.

Following admission of an eligible person to a hospital for temporary or continuing care and treatment, he shall be examined by qualified members of the medical staff as soon as practicable, but not later than the fifth day after his admission. Each such person shall be reexamined at least once within each six month period beginning with the month following the month in which he was first examined.

§ 211.10 Termination of hospitalization.

(a) *Discharge or conditional release.* If, following an examination, the head of the hospital finds that the eligible person hospitalized for mental illness (whether or not pursuant to a judicial commitment) is not in need of such hospitalization, he shall be discharged. In the case where hospitalization was pursuant to a judicial commitment, the head of the hospital may, in accordance with laws governing hospitalization for mental illness as may be in force and generally applicable in the State in which the hospital is located, conditionally release him if he finds that this is in his best interests.

(b) *Notification to committing court.* In the case of any person hospitalized under section 211.8 who has been judicially committed to the custody of the Secretary, the Secretary will notify the committing court in writing of the discharge or conditional release of such person under this section or of his transfer and release under § 211.7.

§ 211.11 Request for release from hospitalization.

If an eligible person who is hospitalized pursuant to the Act, or his legal guardian, spouse, or adult next of kin, requests his release, such request shall be granted by the Director if his best interests will be served thereby, or by the head of the hospital if he is found not to be in need of hospitalization by reason of mental illness. The right of the Director, or the head of the hospital, to refuse such request and to detain him for care and treatment shall be determined in accordance with laws governing the detention, for care and treatment, of persons alleged to be mentally ill as may be in force and applicable generally in the State in which such hospital is located, but in no event shall the patient be detained more than forty-eight hours (excluding any period of time falling on a Sunday or a legal holiday observed by the courts of the State in which such hospital is located) after the receipt of such request unless within such time (a) judicial proceedings for such hospitalization are commenced or (b) a judicial extension of

such time is obtained, for a period of not more than five days, for the commencement of such proceedings.

§ 211.12 Federal payments.

The arrangements made by the Director with an agency or hospital for carrying out the purposes of the Act shall provide for payments to such agency or hospital, either in advance or by way of reimbursement, of the costs of reception, temporary care, treatment, and assistance, continuing care and treatment, and transportation, pursuant to the Act, and payments for other expenditures necessarily and reasonably related to providing the same. Such arrangements shall include the methods and procedures for determining the amounts of the advances or reimbursements, and for remittance and adjustment thereof.

§ 211.13 Financial responsibility of the eligible person; collections, compromise, or waiver of payment.

(a) *For temporary care and treatment.* If an eligible person receiving temporary care, treatment, and assistance, pursuant to the Act, has financial resources available to pay all or part of the costs of such care, the Director shall require him to pay for such costs, either in advance or by way of reimbursement, unless in his judgment it would be inequitable or impracticable to require such payment.

(b) *For continuing care and treatment.* Any eligible person receiving continuing care and treatment in a hospital, or his estate, shall be liable to pay or contribute toward the payment of the costs or charges therefor, to the same extent as such person would, if a resident of the District of Columbia, be liable to pay, under the laws of the District of Columbia, for his care and maintenance in a hospital for the mentally ill in that jurisdiction.

(c) *Collections, compromise, or waiver of payment.* The Director may, in his discretion, where in his judgment substantial justice will be best served thereby or the probable recovery will not warrant the expense of collection, compromise, or waive the whole or any portion of, any claim for continuing care and treatment, and assistance, and in the process of arriving at such decision, the Director may make or cause to be made such investigations as may be necessary to determine the ability of the patient to pay or contribute toward the cost of his continuing care and treatment in a hospital.

§ 211.14 Disclosure of information.

(a) No disclosure of any information with respect to an individual obtained at any time by any person, organization, or institution in the course of discharging the duties of the Secretary under the Act shall be made except insofar:

(1) As the individual or his legal guardian, if any (or, if he is a minor, his parent or legal guardian), shall consent;

(2) As disclosure may be necessary to carry out any functions of the Secretary under the Act;

(3) As disclosure may be directed by the order of a court of competent jurisdiction;

(4) As disclosure may be necessary to carry out any functions of any agency of the United States which are related to the return of the individual from a foreign country, or his entry into the United States; or

(5) As expressly authorized by the Commissioner of Welfare.

(b) An agreement made with an agency or hospital for care, treatment, and assistance pursuant to the Act shall provide that no disclosure will be made of any information received by such agency or hospital in the course of discharging the duties under such agreement except as is provided therein, or is otherwise specifically authorized by the Commissioner of Welfare.

(c) Nothing in this section shall preclude disclosure, upon proper inquiry, of information as to the presence of an eligible person in a hospital, or as to his general condition and progress.

§ 211.15 Nondiscrimination.

(a) No eligible person shall, on the ground of race, color, or national origin, be excluded from participation, be denied any benefits, or otherwise be subjected to discrimination of any nature or form in the provision of any benefits, under the Act.

(b) The prohibition in paragraph (a) of this section precludes discrimination either in the selection of individuals to receive the benefits, in the scope of benefits, or in the manner of providing them. It extends to all facilities and services provided by the Director or an agency to an individual, and to the arrangements and the procedures under this part relating thereto, in connection with reception, temporary care, treatment, and assistance, and continuing hospitalization under the Act.

PART 212—ASSISTANCE FOR UNITED STATES CITIZENS RETURNED FROM FOREIGN COUNTRIES

Sec.

AUTHORITY: The provisions of this Part 212 issued under section 302, 75 Stat. 142, section 1102, 49 Stat. 647, as amended; 42 U.S.C. 1313, 1302. Interprets or applies section 302, 75 Stat. 142, 42 U.S.C. 1313.

§ 212.1 General definitions.

When used in this part:

(a) "Act" means section 1113 of the Social Security Act, as amended;

(b) The term "Secretary" means the Secretary of Health, Education, and Welfare;

(c) The term "Department" means the Department of Health, Education, and Welfare;

(d) The term "Bureau" means the Bureau of Family Services of the Welfare Administration, Department of Health, Education, and Welfare;

(e) The term "Director" means the Director of the Bureau of Family Services;

(f) The term "eligible person" means an individual with respect to whom the conditions in § 212.3 are met;

(g) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam;

(h) The term "United States" when used in a geographical sense means the States;

(i) The term "agency" means State or local public agency or organization or national or local private agency or organization with which the Director has entered into agreement for the provision of temporary assistance pursuant to the Act;

(j) The term "temporary assistance" means money payments, medical care, temporary billeting, transportation, and other goods and services necessary for the health, or welfare of individuals, including guidance, counseling, and other welfare services.

§ 212.2 General.

The Director shall develop plans and make arrangements for provision of temporary assistance within the United States to any eligible person, after consultation with appropriate offices of the Department of State, the Department of Justice, and the Department of Defense. Temporary assistance shall be provided, to the extent feasible, in accordance with such plans, as modified from time to time by the Director. The Director shall enter into agreements with agencies whose services and facilities are to be utilized for the purpose of providing temporary assistance pursuant to the Act, specifying the conditions governing the provision of such assistance and the manner of payment of the cost of providing therefor.

§ 212.3 Eligible person.

In order to establish that an individual is an eligible person, it must be found that:

(a) He is a citizen of the United States or a dependent of a citizen of the United States;

(b) A written statement has been transmitted to the Bureau by an authorized official of the Department of State containing information which identifies him as having returned, or been brought, from a foreign country to the United States because of the destitution of the citizen of the United States, or the illness of such citizen or any of his dependents, or because of war, threat of war, invasion, or similar crisis. Such statement shall, if possible, incorporate or have attached thereto, all available pertinent information concerning the individual. In case of war, threat of war, invasion, or similar crisis, a determination by the De-

partment of State that such a condition is the general cause for the return of citizens of the United States and their dependents from a particular foreign country, and evidence that an individual has returned, or been brought, from such country to the United States shall be considered sufficient identification of the reason for his return to, or entry into, the United States; and

(c) He is without resources immediately accessible to meet his needs.

§ 212.4 Reception; initial determination, provision of temporary assistance.

(a) The Bureau, or the agency upon notification by the Bureau, will meet individuals, identified as provided in § 212.3(b), at the port of entry or debarkation.

(b) The Bureau or agency will make findings, setting forth the pertinent facts and conclusions, and an initial determination, according to standards established by the Bureau, as to whether an individual is an eligible person.

(c) The Bureau or agency will provide temporary assistance within the United States to an eligible person, according to standards of need established by the Bureau, upon arrival at the port of entry or debarkation, during transportation to his intermediate and ultimate destinations, and after arrival at such destinations.

(d) Temporary assistance may be furnished only for twelve months from the month of arrival of the eligible person in the United States unless he is handicapped in attaining self-support or self-care for such reasons as age, disability, or lack of vocational preparation. In such cases temporary assistance may be extended upon prior authorization by the Bureau for six additional months.

§ 212.5 Periodic review and redetermination; termination of temporary assistance.

(a) The Bureau or agency will review the situation of each recipient of temporary assistance at frequent intervals to consider whether or not circumstances have changed that would require a different plan for him.

(b) Upon a finding by the Bureau or agency that a recipient of temporary assistance has sufficient resources available to meet his needs, temporary assistance shall be terminated.

§ 212.6 Duty to report.

The eligible person who receives temporary assistance, or the person who is caring for or otherwise acting on behalf of such eligible person, shall report promptly to the Bureau or agency any event or circumstance which would cause such assistance to be changed in amount or terminated.

§ 212.7 Repayment to the United States.

(a) An individual who has received temporary assistance shall be required to repay, in accordance with his ability, any or all of the cost of such assistance to the United States, except insofar as it is determined that:

(1) The cost is not readily allocable to such individual;

(2) The probable recovery would be uneconomical or otherwise impractical;

(3) He does not have, and is not expected within a reasonable time to have, income and financial resources sufficient for more than ordinary needs; or

(4) Recovery would be against equity and good conscience.

(b) In determining an individual's resources, any claim which he has against any individual, trust or estate, partnership, corporation, or government shall be considered, and assignment to the United States of such claims shall be taken in appropriate cases.

(c) A determination that an individual is not required to repay the cost of temporary assistance shall be final and binding, unless such determination was procured by fraud or misrepresentation of the individual or some other person, or the individual voluntarily offers to repay.

(d) A determination that an individual is required to repay any or all of the cost of temporary assistance may be reconsidered at any time prior to repayment of the required amount. A further determination shall be made with respect to his liability to repay the balance of such amount on the basis of new evidence as to whether (1) he has, or is expected within a reasonable time to have, income and financial resources sufficient for more than ordinary needs, or (2) recovery would be against equity and good conscience.

§ 212.8 Federal payments.

The agreement made by the Director with an agency for carrying out the purposes of the Act shall provide for payment to such agency, either in advance or by way of reimbursement, of the cost of temporary assistance provided pursuant to the Act, and payment of the cost of other expenditures necessarily and reasonably related to providing the same. Such agreement shall include the method for determining such costs, as well as the methods and procedures for determining the amounts of advances or reimbursement and for remittance and adjustment thereof.

§ 212.9 Disclosure of information.

(a) No disclosures of any information with respect to an individual obtained at any time by any person, organization, or institution in the course of discharging the duties of the Secretary under the Act shall be made except insofar:

(1) As the individual or his legal guardian, if any (or, if he is a minor, his parent or legal guardian), shall consent;

(2) As disclosure may be necessary to carry out any functions of the Secretary under the Act;

(3) As disclosure may be necessary to carry out any functions of any agency of the United States which are related to the return of the individual from a foreign country, or his entry into the United States; or

(4) As expressly authorized by the Commissioner of Welfare.

(b) An agreement made with an agency for the provision of temporary assistance pursuant to the Act shall provide that no disclosure will be made of any information received by such agency in the course of discharging the duties under such agreement except as is provided therein, or is otherwise specifically authorized by the Commissioner of Welfare.

§ 212.10 Nondiscrimination.

(a) No eligible person shall, on the ground of race, color, or national origin, be excluded from participation, be denied any benefits, or otherwise be subjected to discrimination of any nature or form in the provision of any benefits, under the Act.

(b) The prohibition in paragraph (a) of this section precludes discrimination either in the selection of individuals to receive the benefits, in the scope of benefits, or in the manner of providing them. It extends to all facilities and services provided by the Bureau or an agency to an individual, and to the arrangements and the procedures under this part relating thereto, in connection with reception and temporary assistance under the Act.

Effective date. This revision of Chapter II shall become effective on the date of its publication in the FEDERAL REGISTER.

Dated: August 25, 1964.

[SEAL] ELLEN WINSTON,
Commissioner of Welfare.

Approved: December 28, 1964.

ANTHONY J. CELEBREZZE,
Secretary.

[F.R. Doc. 64-13515; Filed, Dec. 30, 1964; 8:51 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 64-1205]

SUBCHAPTER A—GENERAL

PART 1—PRACTICE AND PROCEDURE

Abolition of FCC Form 317

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 23d day of December 1964;

Section 1.543 of the Commission's rules concerns "Special Service Authorizations" (SSA's), which were formerly granted in the standard broadcast service for operations for which regular authorizations could not be granted under the rules. The rule provides that application for such authorization shall be on FCC Form 317, "Application for Standard Broadcast Station Special Service Authorization or Extension Thereof." However, it also provides that no new SSA's will be issued after February 3, 1958, and there are now only two such operations, both of which are the subject of hearings concerning their continuance (WNYC, New York City, Docket No. 11227, and WOI, Ames, Iowa, Docket No. 11290). These operations are by Commission order permitted to

continue (without the necessity for filing for an extension) until decision in the proceedings.

The amendment to § 3.25, the Clear Channel rule, adopted in 1961, provides for regular licensing of these two operations if in the hearings it is concluded that they are in the public interest. (See § 3.25(a), notes 1 and 2.) Subsequent Commission orders have provided for consideration of applications for regular license in the hearings. In filing for different facilities for its SSA operation, WNYC used FCC Form 301. In view of these facts, there is no further need for FCC Form 317, and therefore it should be abolished and § 1.543 amended to delete reference to it. Since these changes are procedural, the notice and effective date provisions of the Administrative Procedure Act do not apply.

In view of the foregoing: *It is ordered*, That effective January 11, 1965, FCC Form 317 is abolished; and § 1.543 is amended by deleting paragraph (b) thereof. Authority for this action is contained in section 4(i) of the Communications Act of 1934, as amended.

NOTE: Rules changes herein will be covered by T.S. I(63)-5.

(Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154)

Released: December 28, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-13493; Filed, Dec. 30, 1964; 8:49 a.m.]

SUBCHAPTER D—SAFETY AND SPECIAL RADIO SERVICES

[Docket 15613—FCC 64-1187]

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Miscellaneous Amendments

In the matter of amendment of Parts 81 and 83 of the Commission's rules to make the frequency pair 2442 kc/s (coast)—2009 kc/s (ship) available for ship-shore use in the Astoria, Oregon area on a day only basis.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 23d day of December 1964;

The Commission having under consideration the above-captioned matter;

It appearing, that in accordance with the requirements of section 4 (a) and (b) of the Administrative Procedure Act, notice of proposed rule making in this matter which made provision for the submission of written comments by interested parties, was published in the FEDERAL REGISTER on September 10, 1964 (29 F.R. 12784) and the period for filing comments has now expired; and

It further appearing, that comments supporting the proposed rule amendments were received from Pacific Northwest Bell Telephone Company. No objections to the amendments proposed were received.

It further appearing, that the public interest, convenience, and necessity will be served by the amendments herein ordered, the authority for which is contained in section 303 (c), (d), (f), and (r) of the Communications Act of 1934, as amended;

It is ordered, That effective February 8, 1965, Parts 81 and 83 of the Commission's rules are amended as set forth below, and that this proceeding is hereby terminated.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

Released: December 28, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

A. Part 81 is amended as follows:

1. In § 81.306(b), the table is amended to add a new entry for Astoria, Oreg., preceding the entry for Astoria-Portland, Oreg., to read as follows:

§ 81.306 Frequencies available below 27.5 Mc/s.

* * * * *

(b) * * *

Coast stations located in the vicinity of—	Coast station transmitting carrier frequency [1]		Associated coast station receiving carrier frequency	
	Frequency (kc/s)	Specific limitations imposed upon availability for use [2]	Frequency (kc/s)	Specific conditions relating to use of these frequencies by ship stations for transmission as shown in § 83.354 (a)(1) of this chapter [2]
* * *	* * *	* * *	* * *	* * *
Astoria, Oreg.	2442	Day only, on condition that no harmful interference will be caused to any service or station which in the discretion of the Commission may have priority on the frequency or frequencies used for the service to which interference is caused.	2009	Day only, on condition that no harmful interference will be caused to any service or station which in the discretion of the Commission may have priority on the frequency or frequencies used for the service to which interference is caused.
* * *	* * *	* * *	* * *	* * *

B. Part 83 is amended as follows:

1. In § 83.354(a)(1), the table is amended to add a new entry for Astoria, Oreg., preceding the entry for Astoria-Portland, Oreg., to read as follows:

§ 83.354 Frequencies below 5000 kc/s for public correspondence.

(a) * * *

(1) * * *

For communication with coast stations located in the vicinity of—	Mobile station transmitting carrier frequency [1]		Associated coast station carrier frequency	
	Frequency (kc/s)	Specific limitations imposed upon availability for use [2]	Frequency (kc/s)	Specific conditions relating to use of these frequencies by coast stations for transmission as shown in § 81.306(b) of this chapter. [2]
* * *	* * *	* * *	* * *	* * *
Astoria, Oreg.	2009	Day only, on condition that no harmful interference will be caused to any service or station which in the discretion of the Commission may have priority on the frequency or frequencies used for the service to which interference is caused.	2442	Day only, on condition that no harmful interference will be caused to any service or station which in the discretion of the Commission may have priority on the frequency or frequencies used for the service to which interference is caused.
* * *	* * *	* * *	* * *	* * *

[F.R. Doc. 64-13494; Filed, Dec. 30, 1964; 8:49 a.m.]

[Docket No. 15302; FCC 64-1188]

PART 87—AVIATION SERVICES

Authorization of Non-Type Accepted Transmitters at International Gateway Stations

1. The Commission has before it for consideration a Petition for Reconsideration filed by Aeronautical Radio, Inc. (ARINC) concerning an amendment to Part 87 of the Commission's rules released July 31, 1964 (FCC 64-735) which, among other things, extended the date for the requirement for type accepted equipment from January 1, 1965, to January 1, 1970, for HF transmitting equipment, in excess of 1,000 watts power, in use in the aeronautical mobile and aeronautical fixed services at international gateway stations. Petitioner objects to the amendment applying only to transmitters in excess of 1,000 watts and requests that the present § 87.77(b) be amended by the addition of a sentence to read as follows: "Types of transmitters of less than 1,000 watts power, now in use for emergency and standby service at such aeronautical enroute and aeronautical fixed stations, may continue to be used for such purposes until January 1, 1970."

This request is based on three main reasons which are set forth in the succeeding paragraphs.

2. Petitioner asserts that HF transmitters having a power rating of less than

1,000 watts are used at U.S. international gateway stations for emergency standby service. These transmitters are seldom called into service and they do not cause interference to others. Should interference occur, ARINC states that immediate corrective actions will be taken.

3. The second allegation by petitioner is that present type accepted equipment, less than 1,000 watts, is not suitable for replacement of existing transmitters. By way of example, ARINC cites the example of the Collins 16F equipment which is presently utilized in various ARINC stations. This transmitter is capable of operating on any of ten frequencies in the aeronautical mobile or aeronautical fixed services. It also provides, according to ARINC, another essential feature of being able to quickly shift frequencies in a matter of a very few seconds. ARINC further asserts that type accepted equipment which comes closest to meeting these requirements has a capability of only four frequencies.

4. The final reason is based on the uncertain needs for future HF communications. Petitioner asserts that (a) efforts are continuing to extend the VHF communications coverage on international routes, (b) industry is on the threshold of practical application of communication satellites, offering separate and expanded continuous VHF two-way communications between the desired ground control locations and aircraft on the major world air routes, (c) there is evidence that operational requirements of the supersonic transport (SST) may require data communications to handle the bulk information exchange with SST aircraft within the allowable time frame and (d) any of these new requirements that may entail HF might be provided by the use of single sideband (SSB).

5. The primary reason for extending the type acceptance date for HF transmitting equipment in excess of 1,000 watts power at international gateway stations was to relieve licensees from a situation that existed through no fault of their own—namely, the lack of suitable type accepted equipment in excess of 1,000 watts power. The Report and Order in this proceeding pointed out that ARINC had not clearly demonstrated that suitable type accepted transmitters under 1,000 watts power were not available. The subject petition, however, does present certain matters which were not before the Commission at the time the present amendment was considered. The infrequent use of emergency standby equipment, however, was considered during the original rule making. The establishment of a separate criterion or category for so-called back-up equipment is not administratively feasible nor does it appear justified. If this equipment is going to be a part of aviation safety communications, it should be subject to the same regulations, where possible, as equipment used on a regular basis.

6. With respect to new matters, the Commission's records substantiate the contention of ARINC that type accepted equipment is unavailable having the power rating and certain other features of the Collins 16F series. These are ten channel transmitters using the "autotune" system, having rated minimum output powers of 250 watts on A_2 or A_3 emission, 400 watts on A_1 emission, and operating in the range 1.5 to approximately 18 Mc/s. The manufacturer specifies the frequency shift time by the operator as less than 8 seconds. On the basis of ARINC's stated need, it is concluded that no suitable type accepted equipment is available with respect to replacing the Collins 16F equipment. The reasoning used in exempting certain transmitters from type acceptance in excess of 1,000 watts would apply to this case as well, but would be limited to Collins 16F equipment.

7. The allegation that the future needs for HF communications are uncertain is supported by the information submitted. The extension of VHF on international routes, communication satellites, supersonic transport and single sideband are all very important factors which make it difficult to forecast with a degree of certainty the role that HF communications will play in the aviation communications structure. It is possible that any one or a combination of these factors could cause a complete revamping and replacement of present HF international gateway facilities even though the equipment may be type accepted. This possibility coming to fruition soon after a change to type accepted equipment could cause a very serious economic impact on licensees affected.

8. The five-year extension requested should provide sufficient time for the future of HF communications at international gateway stations to crystallize so that when type accepted equipment is installed, it would be of a type that would meet operational requirements that may develop. This uncertainty, with respect to HF, is such that relief should be given from the present January 1, 1965 date for type acceptance in the case of transmitters of less than 1,000 watts power, now in use on an emergency or standby basis at international gateway stations. An appropriate amendment to the rules is set forth below.

9. In view of the foregoing: *It is ordered,* This 23d day of December 1964, That the Petition for Reconsideration of ARINC is granted. Accordingly: *It is ordered,* Pursuant to the authority contained in section 303 (e), (f), and (r) of the Communications Act of 1934, as amended, that effective December 31, 1964, Part 87 of the Commission's rules is amended as set forth below. *It is further ordered,* That this proceeding is hereby terminated.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

Released: December 28, 1964.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary.*

[1] Commissioner Cox dissenting.

Section 87.77 (b) and (d) are amended to read as follows:

§ 87.77 Acceptability of transmitters for licensing.

* * * * *

(b) Except as provided in paragraph (d) of this section, each transmitter used in the Aviation Services must be of a type which has been type accepted by the Commission for use in these services.

* * * * *

(d) The following exceptions to the provisions of paragraph (b) of this section are provided on the express condition that the operation of stations using transmitting equipment not type accepted by the Commission shall not result in harmful interference due to the failure of such equipment to comply with the current technical standards of Subpart A of this part.

(1) Type accepted equipment is not required at developmental stations.

(2) Type accepted equipment is not required at Civil Air Patrol stations.

(3) Equipment which has not been type accepted may be used at flight test stations for limited periods where justified on the basis of good cause shown.

(4) Equipment which is to be used exclusively under emergency and distress conditions for survival purposes and which is carried aboard aircraft in such a manner as to only be available under these conditions need not be type accepted by the Commission if it is a type which was in use prior to January 1, 1965.

(5) Until January 1, 1970, the following classes of equipment in use by a licensee prior to July 1, 1959, may continue to be used by the same licensee, his successors or assigns: (i) HF transmitting equipment in excess of 1,000 watts power in aeronautical mobile and aeronautical fixed services at international gateway stations and stations in Alaska; and (ii) HF transmitters in use on an emergency or standby basis in the aeronautical mobile and aeronautical fixed services at international gateway stations.

[F.R. Doc. 64-13495; Filed, Dec. 30, 1964; 8:49 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 33—SPORT FISHING

Deer Flat National Wildlife Refuge, Idaho

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

IDAHO

DEER FLAT NATIONAL WILDLIFE REFUGE

Sport fishing on the Deer Flat National Wildlife Refuge, Idaho, is permitted only

on the area designated by signs as open to fishing. This open area, comprising 9,500 acres, is delineated on maps available at the refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay Street, Portland, Oregon, 97208. Sport fishing shall be in accordance with all applicable State regulations, subject to the following special conditions:

(1) The sport fishing season on the Lake Lowell Unit of the refuge shall be as follows: Upper one-third of Lake Lowell open from April 1 through September 30, 1965. Lower two-thirds of the Lake open to fishing year round, except closed during migratory waterfowl hunting season. The Snake River portion is open to year-round fishing.

(2) Boats with motors may be used for fishing as follows: Motorboats to be operated on Lake Lowell during daylight hours only. Boats with motors may be used on lower two-thirds of Lake Lowell from April 1 through September 30, 1965. Boats without motors may be used on lower two-thirds of lake throughout fishing season. Boats without motors permitted on upper one-third of lake from January 1 through September 30, 1965. In New York Canal, bank fishing only permitted.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective to January 1, 1966.

HENRY BAETKEY,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 22, 1964.

[F.R. Doc. 64–13467; Filed, Dec. 30, 1964; 8:46 a.m.]

PART 33—SPORT FISHING

Stillwater National Wildlife Refuge, Nevada

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NEVADA

STILLWATER NATIONAL WILDLIFE REFUGE

Sport fishing on the Stillwater National Wildlife Refuge, Nevada, is permitted only on the area designated by signs as open to fishing. This open area, comprising 4,000 acres, is delineated on maps available at the refuge headquarters, Stillwater National Wildlife Refuge, Fallon, Nevada, and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay Street, Portland, Oregon, 97208. Sport fishing shall be in accordance with all applicable State regulations, subject to the following special conditions:

(1) January 1 to December 31, 1965, except closed during migratory waterfowl hunting season.

(2) Boats with motors up to 10 HP may be used for fishing.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective to January 1, 1966.

HENRY BAETKEY,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 22, 1964.

[F.R. Doc. 64–13468; Filed, Dec. 30, 1964; 8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 911, 915]

[Docket Nos. AO–267–A2, AO–254–A3]

HANDLING OF LIMES AND AVOCADOS

Decision and Referendum Order With Respect to Proposed Further Amendments of the Marketing Agreements and Orders

Pursuant to the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Modello, Florida, on October 22, 1964, after notice thereof published in the FEDERAL REGISTER (29 F.R. 14121), on proposed further amendments of the respective marketing agreements and orders (7 CFR Parts 911 and 915) regulating the handling of Florida limes and avocados, to be made effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

On the basis of the evidence adduced at the hearing, and the record thereof, the recommended decision in this proceeding was filed on December 1, 1964, with the Hearing Clerk, United States Department of Agriculture. The notice of the filing of such recommended decision, affording opportunity to file written exceptions thereto, was published in the FEDERAL REGISTER (F.R. Doc. 64–12421; 29 F.R. 16258) on December 4, 1964. No exception was filed.

The material issues, findings and conclusions, rulings, and the general findings of the recommended decision set forth in the FEDERAL REGISTER (F.R. Doc. 64–12421; 29 F.R. 16258) are hereby approved and adopted as the material issues, findings and conclusions, rulings, and the general findings of this decision as if set forth in full herein.

Further amendments of the marketing agreements and orders. Annexed hereto and made a part hereof are documents entitled, respectively, "Marketing Agreement, as Amended, Regulating the Handling of Limes Grown in Florida," "Order Amending the Order, as Amended, Regulating the Handling of Limes Grown in Florida," "Marketing Agreement, as Amended, Regulating the Handling of Avocados Grown in South Florida," and "Order Amending the Order, as Amended, Regulating the Handling of Avocados Grown in South Florida" which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the aforesaid rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Referendum order. Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), it is hereby directed that referenda be conducted:

(1) Among the producers who, during the period April 1, 1963, through March 31, 1964 (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged, within the production area (as defined in 7 CFR Part 911), in the production of limes for market to ascertain whether such producers favor the issuance of the said annexed order amending the order, as amended, regulating the handling of such limes; and

(2) Among the producers who, during the period April 1, 1963, through March 31, 1964 (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged, within the production area (as defined in 7 CFR Part 915), in the production of avocados for market to ascertain whether such producers favor the issuance of the said annexed order amending the order, as amended, regulating the handling of such avocados.

Minard F. Miller, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Post Office Box 9, Lakeland, Fla., 33802, is hereby designated referendum agent to conduct said referenda.

The procedure applicable to each referendum shall be the procedure (28 F.R. 6409) for the conduct of referenda regarding marketing orders for fruits, vegetables, and tree nuts.

It is hereby ordered, That all of this decision and referendum order, except the annexed marketing agreements, as amended, be published in the FEDERAL REGISTER. The respective regulatory provisions of the said marketing agreements are identical with those contained in the said orders as further amended by the annexed orders which will be published with this decision.

Dated: December 28, 1964.

GEORGE L. MEHREN,
Assistant Secretary.

Order [1] Amending the Order, as Amended, Regulating the Handling of Limes Grown in Florida

§ 911.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations made in connection with the issuance of the order and of the previously issued amendment thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder (7 CFR Part 900), a public hearing was held at Modello, Florida, on October 22, 1964, upon proposed amendments to the amended marketing agreement and Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended and as hereby amended, and all the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said order, as amended and as hereby amended, regulates the handling of limes grown in the designated production area in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, the marketing agreement upon which hearings have been held;

(3) The said order, as amended and as hereby amended, is limited in application to the smallest regional production area that is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of such production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of limes grown in the production area covered by the said order, as amended and as hereby amended, that make necessary different terms and provisions applicable to different parts of such area;

(5) All handling of limes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

It is, therefore, ordered, That, on and after the effective date hereof, all handling of limes grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended and as hereby amended, as follows:

In § 911.20, the second and fourth sentences are revised to read as follows: "Five of the members and their respective alternates shall be growers who shall not be handlers of limes produced by others or employees of such handlers. * * * The five members of the committee who shall be growers who shall not be handlers of limes produced by others or employees of such handlers are referred to as 'grower' members of the committee; and the four members who shall be handlers or employees of handlers are referred to as 'handler' members of the committee."

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and orders have been met.

Order[1] *Amending the Order, as Amended, Regulating the Handling of Avocados Grown in South Florida*

§ 915.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations made in connection with the issuance of the order and of the previously issued amendments thereto; and all of said previous findings and determinations here hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder (7 CFR Part 900), a public hearing was held at Modello, Florida, on October 22, 1964, upon proposed amendments to the amended marketing agreement and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended and as hereby amended, and all the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said order, as amended and as hereby amended, regulates the handling of avocados grown in the designated production area in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, the marketing agreement upon which hearings have been held;

(3) The said order, as amended and as hereby amended, is limited in application to the smallest regional production area that is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of such production area would not effectively carry out the declared policy of the act;

(4) The said order, as amended and as hereby amended, prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in production and marketing of the avocados covered thereby;

(5) All handling of avocados grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

It is, therefore, ordered, That, on and after the effective date hereof, all handling of avocados grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended, and as hereby amended as follows:

In § 915.20, the second and fourth sentences are revised to read as follows: "Five of the members and their respective alternates shall be growers who shall not be handlers of avocados produced by others or employees of such handlers. * * * The five members of the committee who shall be growers who shall not be handlers of avocados produced by others or employees of such handlers are referred to as 'grower' members of the committee; and the four members who shall be handlers or employees of handlers are referred to as 'handler' members of the committee."

[F.R. Doc. 64–13475; Filed, Dec. 30, 1964; 8:47 a.m.]

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and orders have been met.

[7 CFR Part 980]

ONION IMPORTS

Notice of Proposed Rule Making

Notice is hereby given of a proposed amendment to § 980.103 *Onion Import Regulation* (29 F.R. 12672), applicable to the importation of onions into the United States. This regulation is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

Under Section 8e–1 of the act, whenever two or more marketing orders for a commodity are in effect, the importation of such commodity shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of the order which, as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in most direct competition.

Onion import regulation § 980.103 (29 F.R. 12672), effective since September 14, 1964, complies with the grade, size, and quality requirements for onions marketed under Marketing Order No. 958 regulating shipments of Idaho-Eastern Oregon onions. Grade, size, and quality regulations have also been proposed to become effective March 1, 1965, through June 15, 1965, under Marketing Order No. 959, as amended, regulating shipments of South Texas onions.

It is hereby determined that during the current onion marketing season, from March 1 through June 15, 1965, onions imported into the United States will be in most direct competition with onions produced in the South Texas production area and that import regulations during such period shall be based on regulations in effect for South Texas onions under Marketing Order No. 959, as amended (7 CFR Part 959).

Consideration will be given to any data, views, or arguments pertaining to the proposed amendment which are filed in quadruplicate with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, D.C., 20250, not later than 20 days after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendment is as follows:

In § 980.103 *Onion import regulation* (29 F.R. 12672), delete the introductory paragraph and paragraphs (a) and (h) and substitute in lieu thereof a new introductory paragraph and new paragraphs (a) and (h) as set forth below. Paragraph (b) is republished for information.

§ 980.103 Onion import regulation.

Except as otherwise provided, during the period beginning March 1, 1965, and continuing through June 15, 1965, no person may import dry onions, except red onions, unless such onions are inspected and meet the requirements of this section.

(a) *Minimum grade and size requirements*—(1) *Grade.* Not to exceed 20 percent defects of U.S. No. 1 grade. In percentage grade lots, tolerances for serious damage shall not exceed 10 percent including not more than 2 percent decay. Double the lot tolerance shall be permitted in individual packages in percentage grade lots. Application of tolerances in U.S. Grade Standards shall apply to in-grade lots.

(2) *Size.* White onions—1 inch minimum diameter; all other (except red) varieties—1¾ inches minimum diameter.

(b) *Condition.* Due consideration shall be given to the time required for transportation and entry of onions into the United States. Onions with transit time from country of origin to entry into the United States of ten or more days may be entered if they meet an average tolerance for decay of not more than 5 percent, provided they also meet the requirements of this section.

* * * * *

(h) *Definitions.* For the purpose of this section, "Onions" means all varieties of Allium cepa marketed dry, except dehydrated, canned and frozen onions, onion sets, green onions, and pickling onions. Onions commonly referred to as "braided," that is, with tops, may be imported if they meet the grade and size requirements except for top length. The term "U.S. No. 1" shall have the same meaning as set forth in the United States Standards for Bermuda-Granex-Grano Type Onions (§§ 51.3195–51.3209 of this title), or in the United States Standards for Grades of Onions (§§ 51.2830–51.2850 of this title), whichever is applicable to the particular variety. Tolerances for size shall be those in the United States Standards. Onions meeting the requirements of Canada No. 1 grade shall be deemed to comply with the requirements of U.S. No. 1 grade. "Importation" means release from custody of the United States Bureau of Customs.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 et seq.)

Dated: December 28, 1964.

PAUL A. NICHOLSON,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 64–13491; Filed, Dec. 30, 1964; 8:49 a.m.]

[9 CFR Part 201]

REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

Bonding

Notice is hereby given that, pursuant to the authority contained in an act of Congress approved July 12, 1943 (7 U.S.C. 204), and in section 407(a) of the Packers and Stockyards Act (7 U.S.C. 228(a)), the Agricultural Marketing Service proposes to amend § 201.31 (9 CFR 201.31) of the regulations under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), concerning the condition clauses of market agency and dealer bonds.

Statement of considerations. On October 31, 1964, a notice of proposed rule making was published in the FEDERAL REGISTER (29 F.R. 14855) concerning amendments to §§ 201.27 through 201.34 (9 CFR 201.27–201.34) of the regulations under the Packers and Stockyards Act, 1921, as amended. Such regulations relate to general bonding provisions and market agency and dealer bonds. Numerous written comments and recommendations have been received in response to the notice of proposed rule making. Some of the recommendations presently under consideration would not involve substantial changes or modifications in the amendments proposed in the October 31, 1964, notice of proposed rule making. If adopted, such recommendations will be incorporated in the final amendments to the bonding regulations without further notice. Other recommendations, however, involve substantial changes in the proposed amendments and warrant publication in the FEDERAL REGISTER if the Agricultural Marketing Service proposes that they be adopted. One of such changes involves § 201.31.

Present § 201.31 of the regulations covers the condition clauses in market agency and dealer bonds. The proposed amendment to § 201.31 published in the FEDERAL REGISTER on October 31, 1964, clarifies such condition clauses. The recommendations and comments received concerning such amendment indicate that the separate condition clauses covering the livestock buying operations of market agencies and dealers should be consolidated into one clause since many persons are engaged in buying livestock in both capacities and are so registered under the Act. It has also been recommended that the various bond clauses be numbered in order that surety companies may, by reference to the applicable number, incorporate a condition clause into a market agency or dealer bond.

It is now proposed that § 201.31 of the regulations under the Packers and Stockyards Act be amended to read as follows:

§ 201.31 Conditions in market agency and dealer bonds.

Each market agency and dealer bond shall contain conditions applicable to the activity or activities in which the person or persons named as principal or clearees in the bond propose to engage, which conditions shall be as follows or in terms to provide equivalent protection:

(a) *Condition Clause No. 1. When the principal sells livestock for the accounts of others:*

If the said principal shall pay when due to the person or persons entitled thereto the gross amount, less lawful charges, for which all livestock is sold for the accounts of others by said principal.

(b) *Condition Clause No. 2. When the principal buys livestock for his own account or for the accounts of others:*

If the said principal shall pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by said principal for his own account or for the accounts of others, and if the said principal shall safely keep and properly disburse all funds, if any, which come into his hands for the purpose of paying for livestock purchased for the accounts of others.

(c) *Condition Clause No. 3. When the principal clears other registrants buying livestock and thus is responsible for the obligations of such other registrants:*

If the said principal, acting as a clearing agency responsible for the financial obligations of other registrants engaged in buying livestock, viz.: (insert here the names of such other registrants as they appear in the application for registration), or if such other registrants, shall (1) pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by such other registrants; and (2) safely keep and properly disburse all funds coming into the hands of such principal or such other registrants for the purpose of paying for livestock purchased for the accounts of others.

(d) *When the principal clears other registrants selling livestock and thus is responsible for the obligations of such other registrants.* The condition clauses of those selling agencies named prior to September 1, 1957, as clearees in the bonds filed and maintained by market agencies registered to provide clearing services shall remain the same as the condition clauses now in effect in such bonds.

Any person who wishes to submit written data, views, or arguments concerning this proposed amendment may do so by filing them in duplicate with the Hearing Clerk, United States Department of Agriculture, Washington, D.C., on or before February 1, 1965. The time for filing written data, views, or arguments concerning the other proposed amendments to §§ 201.27 through 201.34 published in the FEDERAL REGISTER on October 31, 1964, is hereby extended to and including February 1, 1965.

All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

Done at Washington, D.C., this 28th day of December 1964.

CLARENCE H. GIRARD,
Deputy Administrator.

[F.R. Doc. 64-13474; Filed, Dec. 30, 1964; 8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 15771; FCC 64-1203]

FM BROADCAST STATIONS; CHICAGO AND SKOKIE, ILL.

Proposed Table of Assignments

Notice of proposed rule making and order to show cause. 1. Notice of proposed rule making is hereby given in the above-entitled matter.

2. This is a further step in our efforts to resolve the complex and long-standing FM allocation problems in the Chicago area. In a Memorandum Opinion and Order adopted today, we have assigned Channel 294 to Waukegan, Ill.—for use there or at Des Plaines, Ill., under the "25-mile rule"—as one step toward settling these matters. In reaching this decision, we denied requests that Channel 294 be used at Skokie, Ill. (a community of approximately 60,000 population immediately north of Chicago), to provide a substitute assignment for Station WRSV, Skokie, which now operates on Channel 252A and which, so operating, causes a fairly substantial amount of interference to, and receives interference from, two Chicago stations two channels removed (WHFC on Channel 250 and WFMT on Channel 254). Station WRSV is only about 10 miles distant from one of these stations and 13 miles distant from the other—considerably less than the standard separations between stations two channels removed now provided by our rules (40 miles).

3. The mutual interference which the WRSV assignment involves with the other two stations has been the subject of numerous complaints by listeners to WRSV and WFMT. It appears appropriate to take whatever steps may be feasible to eliminate this unsatisfactory situation.

4. We have recently issued a decision, and a subsequent decision on reconsideration, revoking the license of Station WCLM, Chicago, which operates on Channel 270. This action, which was taken because of operation of that station in a manner violative of the Commission's rules and contrary to the public interest, unless reversed on appeal, makes Channel 270 available for use in the Chicago area.[1]

5. Channel 270 at Chicago is now short-spaced. In view of the large number of other Chicago stations (14), continued use of the channel for Chicago itself does not appear warranted. Nevertheless, we believe that under the circumstances here present, its continued assignment in the Chicago area is appropriate, particularly to resolve the exist-

[1] Carol Music, Inc., licensee of WCLM, has appealed our decision to the United States Court of Appeals for the District of Columbia. Any reassignment of this channel is, of course, subject to the outcome of that appeal.

ing unsatisfactory interference situation between WRSV, Skokie, and the two Chicago stations two channels removed from it. Assignment at Skokie would involve substandard separations to two stations—24 miles to a station on Channel 272A at Waukegan (compared to standard spacing of 40 miles) and 71 miles to a station on Channel 271 at Milwaukee. If a Skokie station is limited to 20 kw E.R.P. and antenna height of 130 feet a.a.t. (the antenna height of WRSV) in the direction of Waukegan and Milwaukee, it would cause no more interference to Waukegan than does WCLM now operating on Channel 270, and less to Milwaukee. The interference situation involving WRSV would be removed and thus over-all assignment conditions would be substantially improved. Therefore we propose to assign Channel 270 to Skokie, to be used with facilities limited as above.

6. Comments are therefore invited on the following amendment to § 73.202 of the rules (Table of FM Assignments), with the understanding that a station assigned to Skokie on Channel 270 will be limited in facilities as set forth in the preceding paragraph:

City	Channel No.	
	Present	Proposed
Chicago, Ill.	226, 230, 234, 238, 242, 246, 250, 254, 258, 262, 266, 270, 278, 282, 298.	226, 230, 234, 238, 242, 246, 250, 254, 258, 262, 266, 278, 282, 298.
Skokie, Ill.	252A	270

7. Authority for the adoption of these rule amendments is contained in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

8. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules, interested persons may file comments on or before February 2, 1965, and reply comments on or before February 12, 1965. All submissions by parties to this proceeding or persons acting in behalf of such parties must be made in written comments, reply comments or other appropriate pleadings.

9. In accordance with the provisions of § 1.419 of the rules, an original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission. Attention is directed to other provisions of paragraph (c) of § 1.419 which require that any person desiring to file identical documents in more than one docketed rule making proceeding shall furnish the Commission two additional copies of any such document for each additional docket unless the proceedings have been consolidated.

10. Pursuant to section 316 of the Communications Act of 1934, as amended, Radio Skokie Valley, Inc., is Ordered to Show Cause why its license for Station WRSV should not be modified to specify operation on Channel 270 with 20 kw power and 130 feet antenna height, in lieu of Channel 252A. A reply to this Order shall be submitted by **February 2, 1965.**

Adopted: December 23, 1964.

Released: December 28, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64–13496; Filed, Dec. 30, 1964; 8:49 a.m.]

[47 CFR Part 73]

[Docket No. 15772; FCC 64–1204]

TELEVISION BROADCAST STATIONS; CASPER, WYOMING

Proposed Table of Assignments

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations (Casper, Wyo.), Docket No. 15772, (RM–656).

1. Notice is hereby given of proposed rule making in the above matter.

2. The Commission has before it a petition filed on September 16, 1964, by the Natrona County High School District and School District Number Two (Natrona) of Casper, Wyo., requesting the institution of a rule making proceeding looking toward the reservation of Channel 6 at Casper, Wyo., for noncommercial educational purposes.

3. At the present time, the Table of Assignments includes Channels 2+ and 6+ for use in Casper. KTWO–TV is operating on Channel 2. An application was filed on September 15, 1964, by Duhamel Broadcasting Enterprises requesting operation on Channel 6; however, this application was dismissed on November 17, 1964, at the request of the applicant.

4. In support of its petition, Natrona (a group composed of all the public elementary and secondary schools in Casper) stated that television has been used for instructional purposes for five years in Casper classrooms. The programs have originated on KTWO–TV (the commercial station in Casper) and additional programs from KRMA–TV (the noncommercial educational station in Denver, Colo.) have been brought into Casper on the local cable system. The programs carried over KTWO–TV are used not only in petitioner's schools but also in other school systems within the KTWO–TV service area. These schools have formed the "Greater Wyoming Instructional Television Council" and now contribute to help defray the expense of the programs carried over KTWO–TV. Petitioner asserts that the ultimate ownership and operation of its own television station is essential if the instructional television program is to grow and is to be developed to meet the needs of the Wyoming schools. It is contended that such a system must originate programs designed to meet the needs of the Wyoming schools and must have its own station to give its program the fullness and flexibility that are impossible when the only time available is that which a commercial station is willing to offer.

5. In view of the foregoing, comments and reply comments are invited on the following proposal:

City	Channel No.	
	Present	Proposed
Casper, Wyo.	2+, 6+	2+, *6+

6. Authority for the adoption of the amendments proposed herein is contained in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

7. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules and regulations, interested parties may file comments on or before February 1, 1965 and reply comments on or before February 15, 1965. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments or other appropriate pleadings.

8. In accordance with the provisions of § 1.419 of the rules, an original and 14 copies of all written comments, replies, pleadings, briefs, or other documents shall be furnished the Commission.

Adopted: December 23, 1964.

Released: December 28, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64–13497; Filed, Dec. 30, 1964; 8:49 a.m.]

INTERSTATE COMMERCE COMMISSION

[49 CFR Ch. I]

[Ex Parte No. MC–67]

MOTOR CARRIER TEMPORARY AUTHORITIES

Extension of Filing Date

DECEMBER 24, 1964.

At the request of interested persons, the time for filing written statements of data, views, and argument in favor of or against the above-entitled rule making proceeding is extended to January 25, 1965. The presently assigned date is December 31, 1964. An original and 20 copies of such statements should be filed with the Commission at its office at Washington, D.C.

By the Commission.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 64–13479; Filed, Dec. 30, 1964; 8:48 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release 34-7487]

PROXY RULES

Extension of Time for Comments on Proposed Amendments

The Securities and Exchange Commission has extended to January 15, 1965, the due date for the submission of views and comments upon the proposal for revision of its proxy rules (Regulation 14) under the Securities Exchange Act of 1934 (17 CFR 240.14a-1 to 240.14a-11). The extension was necessitated by the delay encountered in printing and distributing copies of the proposal to the Commission's mailing lists and in its publication in the FEDERAL REGISTER.

The proposal was announced on December 7, 1964 in Securities Exchange Act Release No. 7481, and published in the FEDERAL REGISTER of December 24, 1964 (29 F.R. 18386).

[SEAL] ORVAL L. DUBOIS,
Secretary.

DECEMBER 22, 1964.

[F.R. Doc. 64-13449; Filed, Dec. 30, 1964; 8:45 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[Bureau Order 551, Amdt. 94]

AGUA CALIENTE INDIAN RESERVATION

Redelegation of Authority With Respect to Brokerage and Other Contracts Regarding Lands

Order 551 (an order by which the Commissioner of Indian Affairs redelegates authority to Bureau Area Directors), as amended, is further amended by the addition of a new section under the heading "Functions Relating to Indian Lands and Minerals" to read as follows:

FUNCTIONS RELATING TO INDIAN LANDS AND MINERALS

SEC. 39. *Agua Caliente Indian Reservation, certain brokerage and other contracts.* The approval of brokerage and other contracts entered into by individual Indians or their legal representatives relating to the management of trust or restricted Indian lands on the Agua Caliente (Palm Springs) Indian Reservation.

JOHN O. CROW,
Deputy Commissioner.

DECEMBER 24, 1964.

[F.R. Doc. 64-13461; Filed, Dec. 30, 1964; 8:45 a.m.]

Bureau of Land Management

COLORADO

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 24, 1964.

The Department of the Army has filed an application, Serial Number Colorado 0124534 for the withdrawal from all forms of appropriation under the public land laws including the mining and mineral leasing laws as provided by Executive Order 10355 of May 26, 1952, certain public lands in the sections and townships described below.

The Department of the Army desires the lands for the expansion of Fort Carson Military Reservation.

For a period of thirty days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Land Office Manager of the Bureau of Land Management, Department of the Interior, Colorado Land Office, Insurance Exchange Building, 910 15th Street, Denver, Colo., 80202.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands affected are:

SIXTH PRINCIPAL MERIDIAN, COLORADO

T. 17 S., R. 67 W.,
In Section 35.
T. 18 S., R. 66 W.,
In Sections 9, 14, 20.
T. 18 S., R. 67 W.,
In Sections 12, 17, 19, 23, 28, 29, 30, 31.
T. 18 S., R. 68 W.,
In Sections 13, 24, 25.

Lands proposed to be withdrawn in the above designated area aggregate approximately 2,868.69 acres.

IOLA M. CLARK,
Acting Land Office Manager.

[F.R. Doc. 64-13463; Filed, Dec. 30, 1964; 8:45 a.m.]

COLORADO

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 24, 1964.

The Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior, has filed an application, Serial Number Colorado 0124543, for the withdrawal from public entry, subject to existing valid claims, under Executive Order 10355, May 26, 1952, the public lands described below.

The applicant desires the land for reclamation purposes in connection with the Alamosa National Wildlife Refuge.

For a period of thirty days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Land Office Manager of the Bureau of Land Management, Department of the Interior, Colorado Land Office, Insurance Exchange Building, 910 15th Street, Denver, Colorado, 80202.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands affected are:

NEW MEXICO PRINCIPAL MERIDIAN, COLORADO

T. 36 N., R. 11 E.
Sec. 2: Lot 4, SW¼NW¼.

Lands proposed to be withdrawn in the above designated area aggregate approximately 86.29 acres.

IOLA M. CLARK,
Acting Land Office Manager.

[F.R. Doc. 64-13464; Filed, Dec. 30, 1964; 8:46 a.m.]

IDAHO

Notice of Filing of Idaho Protraction Diagrams

DECEMBER 23, 1964.

Notice is hereby given that effective at and after 10:00 a.m., on January 27, 1965, the following protraction diagrams are officially filed of record in the Idaho Land Office, Room 327, Federal Building, Boise, Idaho, 83701, and are available to the public as a matter of information only. In accordance with Title 43, Code of Federal Regulations, these protractions will become the basic record for describing the land for all authorized uses. Until this date and time the diagrams have been placed in open files and are available to the public for information only.

IDAHO PROTRACTION DIAGRAMS

Nos. 2, 5, 43, 68, 78, 97, 98, 99, 100, 101, 102.

BOISE MERIDIAN

APPROVED DECEMBER 2, 1964

No. 2

Ts. 62, 64 and 65 N., R. 1 W.

No. 5

T. 56 N., R. 3 E.,
Ts. 57 and 58 N., Rs. 2 and 3 E.

No. 43

T. 22 N., R. 3 E.,
T. 23 N., R. 4 E.

No. 68

T. 13 N., R. 39 E.,
T. 14 N., R. 44 E.,
T. 16 N., R. 43 E.

No. 78

T. 11 N., R. 44 E.

No. 97

Ts. 1 and 2 S., Rs. 26 and 27 E.

No. 98

T. 3 S., Rs. 26 and 27 E.,
T. 4 S., Rs. 25 and 26 E.

No. 99

T. 10 S., Rs. 41 and 42 E.
T. 11 S., R. 42 E.

No. 100

Ts. 12 and 13 S., R. 41 E.

No. 101

Ts. 14 and 15 S., R. 41 E.

No. 102

Ts. 13 and 15 S., R. 37 E.

Copies of these diagrams are for sale at one dollar ($1.00) each by the Cadastral Engineering Office, Bureau of Land Management, Post Office Box 2237, Boise, Idaho, 83701.

EUGENE E. BABIN,
Acting Manager, Land Office, Boise, Idaho.

[F.R. Doc. 64-13465; Filed, Dec. 30, 1964; 8:46 a.m.]

OREGON

Notice of Termination of Proposed Withdrawal and Reservation of Land

DECEMBER 23, 1964.

Notice of an application, Serial No. 013665, for withdrawal and reservation of lands, was published as Federal Register Document No. 63-10475 on Page 10684 of the issue for October 3, 1963. The applicant agency, Forest Service, United States Department of Agriculture, has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Part 2311, such lands will be relieved of the segregative effect of the withdrawal application at 10:00 a.m., January 18, 1965.

The lands involved in this notice of termination are:

OREGON

WILLAMETTE MERIDIAN

MT. HOOD NATIONAL FOREST

Eagle Creek Campground

T. 2 N., R. 7 E.,
Sec. 22, Those portions of SE¼NE¼ and NE¼SE¼ lying below the 87.5 contour line as determined by reference to U.S.C. and GS data.
Total—5.90 acres.

Columbia Gorge Ranger Station Administrative Site

T. 2 N., R. 8 E.,
Sec. 5, Those portions of Lot 3 and NE¼ SE¼ lying north of the south right-of-way line of U.S. Highway 30.
Sec. 6, Lot 1.
Total—63.37 acres.

The total area aggregates 69.27 acres.

M. M. GORECKI,
Acting Manager, Land Office.

[F.R. Doc. 64-13466; Filed, Dec. 30, 1964; 8:46 a.m.]

Fish and Wildlife Service

[Docket No. Sub-B-17]

BOAT OUINGONDY, INC.

Construction Differential Subsidy

Boat Ouingondy, Inc., Marion, Mass., has applied for a fishing vessel construction differential subsidy to aid in the construction of a 100-foot overall steel vessel to engage in the fishery for scallops, groundfish, and flounder.

Notice is hereby given pursuant to the provisions of the United States Fishing Fleet Improvement Act (P.L. 88-498) and Notice and Hearing on Subsidies (50 CFR Part 257) that a hearing in the above-entitled proceedings will be held on January 28, 1965, at 9 a.m., e.s.t. in Room 3356, Interior Building, 18th and C Streets NW., Washington, D.C. Any person desiring to intervene must file a petition of intervention with the Director, Bureau of Commercial Fisheries, as prescribed in 50 CFR Part 257 at least 10 days prior to the date set for the hearing. If such petition of intervention is granted, the place of the hearing may be changed to a field location. Telegraphic notice will be given to the parties in the event of such a change along with the new location.

DONALD L. MCKERNAN,
Director,
Bureau of Commercial Fisheries.

DECEMBER 29, 1964.

[F.R. Doc. 64-13514; Filed, Dec. 30, 1964; 8:50 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

RICE

Notice of Marketing Quota Referendum for the 1965 Crop

Marketing quotas for the crop of rice to be produced in 1965 have been duly proclaimed pursuant to provisions of the Agricultural Adjustment Act of 1938, as amended. Said act requires a referendum to be conducted within 30 days after the date of the issuance of said proclamation, of farmers who were engaged in the production of rice in 1964 to determine whether such farmers are in favor of or opposed to such quotas. Prior to establishing the date for the referendum on the 1965 crop rice, public notice (29 F.R. 13273) was given in accordance with the Administrative Procedure Act (5 U.S.C. 1003). No data, views, or recommendations pertaining thereto were submitted pursuant to such notice. It is hereby determined that the rice marketing quota referendum under said act for the 1965 crop of rice shall be held on January 26, 1965, which is within thirty days from the date of issuance of the proclamation of marketing quotas.

The date of the referendum is within thirty days after the date of the issuance of the proclamation of marketing quotas on the 1965 crop of rice, as required by law. Accordingly, it is necessary to waive the thirty-day effective date provision of the section 4 of the Administrative Procedure Act, and this document shall become effective upon its publication in the FEDERAL REGISTER.

Effective date: Upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on December 24, 1964.

E. A. JAENKE,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 64-13470; Filed, Dec. 28, 1964; 10:48 a.m.]

Office of the Secretary

PENNSYLVANIA

Designation and Extension of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the State of Pennsylvania a natural disaster has caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

PENNSYLVANIA

Columbia	Schuylkill
Montour	Snyder
Northumberland	Union

It has also been determined that in the hereinafter-named counties in the State of Pennsylvania which are presently designated the above-mentioned natural disaster has caused a continuing need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

Pennsylvania:	*Previous designation*
Bedford	28 F.R. 10003
Berks	28 F.R. 10003
Bradford	28 F.R. 10003
Bucks	29 F.R. 2514
Carbon	28 F.R. 10003
Centre	28 F.R. 10003
Dauphin	28 F.R. 11828
Delaware	29 F.R. 2514
Franklin	28 F.R. 10003
Fulton	28 F.R. 10003
Huntingdon	28 F.R. 10003
Juniata	28 F.R 11828
Lackawanna	28 F.R. 10003
Lehigh	28 F.R. 10003
Luzerne	29 F.R. 2514
Mifflin	28 F.R. 11828
Monroe	28 F.R. 10003
Montgomery	29 F.R. 2514
Northampton	28 F.R. 10003
Perry	28 F.R. 11828
Pike	28 F.R. 10003
Sullivan	28 F.R. 10003
Susquehanna	28 F.R. 10003
Tioga	28 F.R. 10003
Wayne	28 F.R. 10003
Wyoming	28 F.R. 10003

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after December 31, 1965, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 28th day of December, 1964.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 64-13492; Filed, Dec. 30, 1964; 8:49 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ELANCO PRODUCTS CO., DIVISION OF ELI LILLY AND CO.

Notice of Withdrawal of Petition for Food Additive Tylosin Plus Streptomycin

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of

the procedural food additive regulations (21 CFR 121.52), Elanco Products Co., Division of Eli Lilly and Co., Indianapolis 6, Indiana, has withdrawn its petition (FAP 4C1447), published in the FEDERAL REGISTER of August 1, 1964 (29 F.R. 11166), proposing the issuance of a regulation to provide for the safe use of tylosin plus streptomycin in chickens for prevention and treatment of chronic respiratory disease by subcutaneous injection in broiler and replacement chickens.

The withdrawal of this petition is without prejudice to a future filing.

Dated: December 22, 1964.

M. R. STEPHENS,
Assistant Commissioner for Regulations.

[F.R. Doc. 64-13487; Filed, Dec. 30, 1964; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 15672, 15673; FCC 64M-1282]

ESTACADA TELEPHONE & TELEGRAPH CO. AND PACIFIC NORTHWEST BELL TELEPHONE CO.

Order Continuing Prehearing Conference

In re applications of Estacada Telephone & Telegraph Company, Docket No. 15672, File No. 5557-C2-P-63, for a construction permit to establish new facilities in the Domestic Public Land Mobile Radio Service near Estacada, Oregon; Pacific Northwest Bell Telephone Company, Docket No. 15673, File No. 6281-C2-P-63, for a construction permit to modify the facilities of station KOA731 in the Domestic Public Land Mobile Radio Service near Salem, Oregon.

It is ordered, This 28th day of December 1964, that the prehearing conference in the above-entitled proceeding, which heretofore was scheduled for December 28, 1964, is continued to January 6, 1965, and will be convened at 9:00 a.m. on that date in the Offices of the Commission, Washington, D.C.

Released: December 28, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-13498; Filed, Dec. 30, 1964; 8:50 a.m.]

[Docket Nos. 14411, 14412; FCC 64M-1281]

LA FIESTA BROADCASTING CO. AND MID-CITIES BROADCASTING CORP.

Order Continuing Hearing

In re applications of J. R. Earnest and John A. Flache, d/b as La Fiesta Broadcasting Company, Lubbock, Texas, Docket No. 14411, File No. BP-14116; Mid-Cities Broadcasting Corporation, Lubbock, Texas, Docket No. 14412, File No. BP-15073; for construction permits.

The Hearing Examiner having under consideration a joint oral motion made December 24, 1964, by all parties in the above-entitled matter for a continuance of the further hearing now scheduled for December 29, 1964, and

It appearing, that counsel require additional time for collating and studying a quantity of newly arrived depositions and answers to interrogatories prior to the further hearing:

It is ordered, This 28th day of December 1964, that the oral motion is granted and that, accordingly, the further hearing now scheduled for December 29, 1964, is continued to 10:00 a.m., January 15, 1965, in the Commission's offices in Washington, D.C.

Released: December 28, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-13499; Filed, Dec. 30, 1964; 8:50 a.m.]

[Docket Nos. 15358, 15433; FCC 64M-1283]

LOMPOC VALLEY CABLE TV, INC.

Order Scheduling Hearing

In re applications of Lompoc Valley Cable TV, Inc., Docket No. 15358, File No. 30779-IB-53X; Docket No. 15433, File No. 29978-IB-24X; for operational fixed stations in the business radio service.

It is ordered, This 28th day of December 1964, on the Chief Hearing Examiner's own motion, that the dates heretofore prescribed for the filing of proposed findings and conclusions and for the filing of replies in the above-entitled proceeding, are, respectively, postponed from January 4 to February 4, 1965, and from January 11 to February 11, 1965; and, *It is further ordered,* That the record of hearing in the proceeding is hereby reopened and that further hearings will be convened in the Offices of the Commission, Washington, D.C., on January 11, 1965.

Released: December 28, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-13500; Filed, Dec. 30, 1964; 8:50 a.m.]

[Docket No. 14855; FCC 64M-1279]

NORTHERN INDIANA BROADCASTERS, INC.

Order Scheduling Prehearing Conference

In re application of Northern Indiana Broadcasters, Inc., Mishawaka, Indiana, Docket No. 14855, File No. BP-14771; for construction permit.

On the Hearing Examiner's own motion: *It is ordered,* This 23d day of December 1964, that a prehearing conference will be held at 9:00 a.m., January 4, 1965, to discuss future steps to be taken in this proceeding pursuant to the Commission's Order of Remand dated August 10, 1964 (FCC 64R-407).

Released: December 23, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-13501; Filed, Dec. 30, 1964; 8:50 a.m.]

[Docket No. 14611; FCC 64M-1280]

PROGRESS BROADCASTING CORP. (WHOM)

Order Continuing Prehearing Conference

In re application of Progress Broadcasting Corporation (WHOM), New York, New York, Docket No. 14611, File No. BP-13915; for construction permit.

Upon verbal request by counsel for respondent K & M Publishing Company, Inc., and with the concurrence of other counsel: *It is ordered,* This 24th day of December 1964, that the prehearing conference herein, now scheduled for December 29, 1964, be and the same is hereby rescheduled for January 18, 1965, at 9:00 a.m., in the Commission's offices, Washington, D.C.

Released: December 28, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-13502; Filed, Dec. 30, 1964; 8:50 a.m.]

FEDERAL MARITIME COMMISSION

BARBER-WEST AFRICAN LINE AND FARRELL LINES INC.

Notice of Agreements Filed for Approval

Notice is hereby given that the following Agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement(s) at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 301; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, Louisiana, and San Francisco, California. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter), and the comments should indicate that this has been done.

Notice of Agreement Filed for Approval by:

John G. de Roos, Esq.
Barber Steamship Lines, Inc.
Sheraton-Whitehall Building
17 Battery Place
New York, N.Y., 10004

Agreement 8421–3, between the carriers comprising the Barber-West African Line joint service (operating pursuant to approved joint service agreement 7668, as amended) and Farrell Lines Incorporated, modifies approved Agreement 8421, as amended, which covers a through billing arrangement in the trade between Harbel, Grand Bassa, Sinoe, and Cape Palmas, Liberia and United States Atlantic ports, with transhipment at Monrovia, Liberia. The purpose of the modification is to change the participation of the Barber-West African Line joint service, as provided by Agreement 7668–3, as a party to Agreement 8421, as amended.

Dated: December 28, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64–13488; Filed, Dec. 30, 1964; 8:48 a.m.]

INDEPENDENT OCEAN FREIGHT FORWARDER APPLICATIONS

Notice of Revision

Notice is hereby given of changes in the following applications for independent ocean freight forwarder licenses issued pursuant to section 44, Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(b)).

GRANDFATHER APPLICANTS

Balfour, Williamson Inc., 84 William Street, New York, N.Y., 10038; withdrawn Dec. 11, 1964.

Hilann Forwarding, 25 Broadway, New York, N.Y.; revoked, to become effective Feb. 5, 1965.

Korinth Container-Pak, Inc., 1411 North Martel, Hollywood, Calif.; revoked Dec. 10, 1964.

Allen R. Hoffman & Co., 2310 West Avenue, Newport News, Va.; withdrawn Sept. 19, 1962.

NON-LATE

,Velox Company (Non), Everett A. Van Teslaar, d/b/a, 630 San Vicento Boulevard, Santa Monico, Calif.; withdrawn Dec. 3, 1964.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission, applications for licenses as independent ocean freight forwarders, pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(b)).

Persons knowing of any reason why any applicant should not receive a license are requested to communicate with the Director, Bureau of Domestic Regulation, Federal Maritime Commission, Washington, D.C., 20573. Protests received within 60 days from the date of publication of this notice in the FEDERAL REGISTER will be considered.

NEW APPLICANTS

Philip A. Dunlap (Non), 3421 Dover Road, Redwood City, Calif.; Philip A. Dunlap, owner.

Murray Freight Services, Inc. (Non), Post Office Box 90606, Los Angeles, Calif., 90045; Thomas D. Murray, President; James E. Murray, Vice President, Treasurer; Thomas B. Householder, Secretary.

Carl Matusek (Non), Seaport Pier No. 2, Miami, Fla., 33132; Carl Matusek, owner.

Oceanbrokers, Inc. (Non), 1200 California Street, San Francisco, Calif.; Daniel Shonkoff, President; Nils H. A. Heyerdahl, Vice President; Alta B. Shonkoff, Secretary-Treasurer.

CHANGE OF OFFICERS

Cuban American Forwarders Co., Inc., 95 Broad Street, New York 4, N.Y.; Miss Angela H. Ramos, Treasurer.

CHANGE OF ADDRESS

Buchholz & Kuttruff, Inc., 315 International Trade Mart Building, New Orleans, La., 70130; Bill Polkinhorn, 110 West Seventh Street, Post Office Box 568, Calexico, Calif., 92231.

Afro-Asian Forwarding Co., Inc., 20 Pearl Street, New York, N.Y., 10004.

Dated: December 28, 1964.

THOMAS LISI,
Secretary.

[F.R. Doc. 64–13489; Filed, Dec. 30, 1964; 8:48 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G–9666]

COLORADO INTERSTATE GAS CO.

Notice of Application To Amend

DECEMBER 22, 1964.

Take notice that on November 13, 1964, Colorado Interstate Gas Company (Applicant), Colorado Springs National Bank Building, Colorado Springs, Colo., filed in Docket No. G–9666 an application to amend the order of the Commission issued March 15, 1956, which order authorized Applicant to construct a meter station for sale and delivery of natural gas on an emergency basis to Northern Gas Company (Northern) under Applicant's Rate Schedule E–1.

In the subject application, Applicant requests authorization to continue said sale and delivery of natural gas to Northern on a permanent basis, under Applicant's Rate Schedules G–1 and IS–2, instead of under its Rate Schedule E–1.

The application states that the total estimated annual requirments of Northern are 300,000 Mcf.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 18, 1965.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the proposed amendment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 64–13453; Filed, Dec. 30, 1964; 8:45 a.m.]

[Project No. 1971]

IDAHO POWER CO.

Order Granting Secretary of Interior's Petition for Leave To Intervene and Setting Oral Argument

DECEMBER 23, 1964.

On November 12, 1964, we granted a timely petition of the Secretary of the Interior for rehearing of our order of September 15, 1964, amending Article 39 of the license, for the limited purpose of giving further consideration to the questions presented by the application. Our order made clear that we were not deciding, but were reserving for further consideration, the question whether the Secretary should be recognized as an intervenor. On November 30, 1964, the Secretary applied for oral argument.

After further consideration, we have concluded that the status of the Secretary in this proceeding is not an appropriate subject for oral argument, and that in the exercise of our discretion we should grant leave to the Secretary to intervene out of time. We are persuaded by the representations in the application for rehearing that responsible officials of the Department of the Interior had construed an exchange of correspondence between the Department and the Commission as granting an extension of time in which to petition to intervene.

In addition, we believe that this proceeding involves important issues in which the Secretary has an interest. Accordingly, we find that the Secretary of the Interior "in extraordinary circumstances for good cause shown" should be permitted to intervene out of time, and that such intervention should be limited, as indicated below.

In our opinion, oral argument before the Commission might simplify the issues and might assist us in arriving at a sound solution. Such oral argument is being limited to the issues presented by the Secretary of the Interior's comments and petition to intervene and his application for rehearing.

The Commission orders:

(A) The Secretary of the Interior is hereby permitted to intervene in this proceeding subject to the Commission's rules and regulations: *Provided, however,* That the participation of the Secretary of the Interior is limited to those matters (not disposed of by this order) affecting asserted rights and interests specifically set forth in his petition to intervene and his application for rehearing, and is further limited to the record presently before the Commission in this proceeding: *And provided, further,* That this order shall not be construed as recognition by

the Commission that the Secretary of the Interior has been, or will be, aggrieved by any order or orders heretofore or hereafter entered by the Commission in this proceeding.

(B) Oral argument in this proceeding shall be held before the Commission in a hearing room at the Commission's offices, 441 G Street NW., Washington, D.C., 20426, on January 18, 1965, at 10 a.m., e.s.t. The Secretary of the Interior, Licensee and the Commission staff shall advise the Secretary of the Commission in writing on or before January 6, 1965, how much time, if any, they desire for oral argument.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 64-13454; Filed, Dec. 30, 1964; 8:45 a.m.]

[Docket No. CP64-265]

MISSISSIPPI RIVER TRANSMISSION CORP.[1]

Notice of Application

DECEMBER 22, 1964.

Take notice that on April 30, 1964, as supplemented on November 2, 1964, Mississippi River Transmission Corporation[1] (Applicant), 9900 Clayton Road, St. Louis, Mo., filed in Docket No. CP64-265 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities and the transportation of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Applicant proposes to install a tap connection on an existing 12¾-inch O.D. line in Jefferson County, Missouri and construct and operate 1.31 miles of 6⅝-inch O.D. line from that connection to the portland cement manufacturing plant which Mississippi River Fuel Corporation is constructing near Festus, Jefferson County, Missouri, for the purpose of enabling Applicant to deliver natural gas to said plant, to be used for firing a rotary cement-burning kiln, driers, and other equipment incidental to the operation of said plant.

Estimated annual and peak day deliveries to the cement plant are stated to be:

	First year	Second year	Third year
Annual (Mcf)	1,064,000	1,840,000	1,840,000
Peak day (Mcf)	10,000	10,000	10,000

[1] The original application was filed by Mississippi River Fuel Corporation. However, in Docket No. CP63-12, by Commission order issued August 7, 1964, Mississippi River Transmission Corporation was authorized to acquire, among other things, the pipeline facilities of Mississippi River Fuel Corporation. Consequently, Mississippi River Transmission Corporation will be substituted as Applicant in the instant docket.

The estimated cost of Applicant's proposed construction is $58,900, which will be financed with cash on hand.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 22, 1965.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 64-13455; Filed, Dec. 30, 1964; 8:45 a.m.]

[Project No. 2491]

NORTHERN STATES POWER CO.

Notice of Application for License

DECEMBER 22, 1964.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Northern States Power Co. (correspondence to: Stuart V. Willson, president, Northern States Power Co., 100 North Barstow Street, Eau Claire, Wis.) for a license for constructed Project No. 2491, known as the Jim Falls Hydro Project, located on the Chippewa River, in the village of Jim Falls, Towns of Anson, Arthur, Cleveland, Eagle Point, and Estella, in Chippewa County, Wis.

The project consists of: (1) A 2,589-foot-long dam across the Chippewa River—composed of (a) a 440-foot-long earth embankment which extends from the westerly river bank to (b) a 214.6-foot-long concrete flashboard section (having eight 23.5-foot-wide openings, 3.8 feet deep) which extends to (c) a 358-foot-long concrete tainter gate section (containing 16 gates in 16-foot wide x 13.9-foot deep openings) which extends to (d) a 1,179-foot-long concrete corewall earthen embankment which connects (e) the headrace canal headworks—a 397.5-foot-long concrete structure containing 42 stop-log openings 8 feet wide and 9 feet deep; (2) a 1,800-foot long x 150-foot wide submerged excavated intake canal which leads from the river to the headrace canal headworks; (3) a 4,268-foot long x 75-90-foot wide headrace canal which extends to the penstock headworks; (4) a 104-foot-long concrete and steel penstock headwork structure which contains four penstock openings, two 60-foot wingwalls, and a 40-foot spillway section; (5) three 14-foot-diameter steel penstocks which extend 200 feet to the turbines in the powerhouse; (6) a concrete, brick, and steel powerhouse structure (106 feet x 57 feet in plan) housing three identical generating units—each rated at 4,800 kw and direct connected to Francis-type turbines rated at 4,800 hp at a 50-foot head; and (7) all appurtenant electrical, mechanical, and transmission facilities.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is February 8, 1965. The application is on file with the Commission for public inspection.

JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 64-13456; Filed, Dec. 30, 1964; 8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-3421]

CONTINENTAL VENDING MACHINE CORP.

Order Suspending Trading

DECEMBER 24, 1964.

The common stock, 10 cents par value, of Continental Vending Machine Corp., being listed and registered on the American Stock Exchange and having unlisted trading privileges on the Philadelphia-Baltimore-Washington Stock Exchange, and the 6 percent convertible subordinated debentures due September 1, 1976, being listed and registered on the American Stock Exchange, pursuant to provisions of the Securities Exchange Act of 1934; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such Exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the American Stock Exchange, the Philadelphia-Baltimore-Washington Stock Exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period December 28, 1964 through January 6, 1965, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 64-13450; Filed, Dec. 30, 1964; 8:45 a.m.]

[File No. 812-1687]

THE ISRAEL FUND, INC.

Notice of Filing of Application Pursuant for an Order of Exemption

DECEMBER 24, 1964.

Notice is hereby given that The Israel Fund, Inc. ("Fund"), 4200 Hayward Avenue, Baltimore, Md., 21215, a Maryland corporation registered under the Investment Company Act of 1940 ("Act") as a closed-end non-diversified investment company, has filed an application pursuant to sections 6(c) and 17(b) of the Act. Fund requests (i) an order, effective until the first annual meeting of stockholders, exempting it, its proposed investment adviser and its directors from the provisions of sections 15(a) and 16(a) of the Act to the extent that these sections require approval by shareholders of investment advisory agreements and election of directors by shareholders and (ii) an order exempting affiliated persons of Fund from the provisions of section 17(a) of the Act to the extent that these provisions would otherwise prevent affiliated persons of the Fund from acquiring shares of the Fund in exchange for State of Israel bonds. All interested persons are referred to the application, as amended, on file with the Commission for a full statement of the representations therein which are summarized below.

Fund was organized in 1963 and intends to issue up to 500,000 shares of its common stock when its registration statement under the Securities Act of 1933 becomes effective. Fund presently has no shareholders. Prior to the effective date of the registration statement, Fund proposes to enter into an investment advisory agreement with Multiple Securities Management Company. Since Fund will not have any outstanding voting securities until after the effective date of its registration statement, it will not be possible to secure prior approval of the advisory contract by a vote of a majority of outstanding securities as required by section 15(a) of the Act.

Similarly, the present directors of Fund have not been elected by the holders of the outstanding voting securities, as required by section 16(a) of the Act, and an election will not be possible prior to the proposed issuance of common stock of Fund.

At the first annual meeting of shareholders Fund proposes to secure appropriate shareholder action with respect to the investment advisory contract and the election of directors. Fund intends to hold its first annual meeting of shareholders sometime during 1965. The prospectus to be used by Fund in connection with the sale of Fund's common stock will contain full and appropriate information concerning the directors and the investment advisory contract.

Fund also requests an order of the Commission under section 17(b) of the Act permitting affiliated persons of Fund to purchase its shares for State of Israel bonds. These shares of Fund would be sold at the public offering price described in the prospectus, except that affiliated persons who are directors or officers of Fund, its investment adviser or principal underwriter, or bona fide full-time employees or sales representatives of any of these persons, may be permitted to purchase shares without sales load.

Notice is further given that any interested person may, not later than January 8, 1965, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing shall be issued upon request or upon the Commission's own motion.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 64-13451; Filed, Dec. 30, 1964; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 28, 1964.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA 39485: *Substituted service—B&O for Contract Carriers, Inc.*—Filed by Contract Carriers, Inc. (No. 2), for and on behalf of itself and The Baltimore and Ohio Railroad Company. Rates on shipping containers, viz.: empty drums or containers, returned, loaded in box cars, from Cincinnati, Ohio, to St. Louis, Mo., on traffic originating at or destined to points beyond such points.

Grounds for relief: motor-truck competition.

FSA 39486: *Liquid caustic soda to La Grange, Ga., and Coosa Pines, Ala.*—Filed by Traffic Executive Association-Eastern Railroads, agent (No. 2756), for interested rail carriers. Rates on liquid caustic soda, in tank carloads, from specified points in Michigan, New Jersey, New York, Ohio, and West Virginia, to La Grange, Ga., and Coosa Pines, Ala.

Grounds for relief: market competition.

Tariffs: Supplements 152 and 75 to Traffic Executive Association - Eastern Railroads, agent, tariffs I.C.C. C-102 and C-334, respectively.

FSA 39487: *Soybeans from points in Oklahoma.* Filed by Southwestern Freight Bureau, agent (No. B-8662), for interested rail carriers. Rates on soybeans, in bulk, in carloads, from specified points in Oklahoma to Van Buren, Ark., and Sherman, Tex.

Grounds for relief: carrier competition.

Tariffs: Supplements 27 and 61 to Southwestern Freight Bureau, agent, tariffs I.C.C. 4474 and 4496, respectively.

FSA 39488: *Salt to points in southern territory.* Filed by Southwestern Freight Bureau, agent (No. B-8663), for interested rail carriers. Rates on salt, as described in the application, in carloads, from Carlsbad and Loving, N. Mex., to points in southern territory.

Grounds for relief: Market competition.

Tariff: Supplement 42 to Southwestern Freight Bureau, agent, tariff I.C.C. 4562.

FSA 39489: *Asphalt to Ivanhoe, Minn.* Filed by Trans-Continental Freight Bureau, agent (No. 424), for interested rail carriers. Rates on asphalt (asphaltum), natural, byproduct of petroleum (other than paint, stain, or varnish), in tank carloads, subject to minimum shipment of 10 tank carloads per day, from Billings, East Billings, Great Falls and Laurel, Mont., to Ivanhoe, Minn.

Grounds for relief: Carrier competition.

Tariff: Supplement 36 to Trans-Continental Freight Bureau, agent, tariff I.C.C. 1701.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 64-13477; Filed, Dec. 30, 1964; 8:47 a.m.]

[Disaster Order No. 8]

MONTANA

Transportation of Hay at Reduced Rates

In the Matter of Relief under section 22 of the Interstate Commerce Act.

It appearing, that because of recent heavy snowfall in the State of Montana, the Secretary of Agriculture, by letter dated December 24, 1964, has requested the Commission to enter an order under section 22 of the Interstate Commerce Act authorizing railroads subject to the Commission's jurisdiction to transport hay to the State of Montana at reduced rates:

It is ordered, That carriers by railroad participating in the transportation of hay to the disaster areas in Montana, which is all of the counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, and Wibaux, be, and they are hereby, authorized under sec-

tion 22 of the Interstate Commerce Act to establish and maintain, until May 31, 1965, reduced rates for such transportation, the rates to be published and filed in the manner prescribed in section 6 of the Interstate Commerce Act except that they may be made effective one day after publication and filing instead of thirty.

It is further ordered, That the class of persons entitled to such reduced rates is hereby defined as persons designated as being in distress and in need of relief by the United States Department of Agriculture or by such State agents or agencies as may in turn be designated by the United States Department of Agriculture to assist in relieving the distress caused by the freeze.

It is further ordered, That, during the period in which any reduced rates authorized by this order are effective the carriers may, notwithstanding the provisions of Section 4 of the Interstate Commerce Act, maintain higher rates to directly intermediate points and maintain through rates in excess of the aggregate of intermediate rates over the same routes if one or more of the factors of such aggregate of intermediate rates is a reduced rate established under the authority of this order.

It is further ordered, That any tariffs or tariff provisions published under the authority of this order shall explicitly so state, making reference to this order by number and date.

And it is further ordered, That notice to the affected railroads and the general public shall be given by depositing a copy of this order in the Office of the Secretary of the Commission and by filing a copy with the Director, Office of the Federal Register; and that copies be mailed to the Chairman of the Traffic Executive Association—Eastern Railroads, New York, N.Y., the Chairman of the Southern Freight Association, Atlanta, Ga., the Chairman of the Executive Committee, Western Railroad Traffic Association, Chicago, Ill., the Traffic Vice-President of the Association of American Railroads, Washington, D.C., and to the President of the American Short Line Railroad Association, Washington, D.C.

Dated at Washington, D.C., this 24th day of December A.D. 1964.

By the Commission, Vice Chairman Webb.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 64–13478; Filed, Dec. 30, 1964; 8:47 a.m.]

[Notice 1102]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 28, 1964.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC 67459. By order of December 23, 1964, The Transfer Board approved the transfer to Raeford Trucking Company, a corporation, Sanford, N.C., of Certificates Nos. MC 60508, MC 60508 Sub 7, and MC 60508 Sub 8, issued January 23, 1951, September 1, 1960, and August 26, 1958, to Clyde H. Sizemore, doing business as Sizemore Trucking Company, Clinton, N.C., authorizing the transportation, over irregular routes, of lumber and logs, from points in Caswell County, N.C., to points in Virginia; lumber, brick, lime, cement, and roofing materials, from Danville, Va., to points in North Carolina within 100 miles of Danville; machinery, from points in Virginia to points in Caswell County, N.C.; lumber and millwork, from points in Caswell and Person Counties, N.C., to points in West Virginia on and east of U.S. Highway 219, and on and south of West Virginia Highway 28; from points in Person County, N.C., to points in Virginia; from Danville, Halifax, and South Boston, Va., and points in Person and Caswell Counties, N.C., to Baltimore and Frederick, Md., points in the District of Columbia, and those in Maryland within 15 miles of Washington, D.C., and Baltimore and Frederick, Md., respectively; from points in Pittsylvania, Henry, Halifax, and Roanoke Counties, Va., to Yanceyville, N.C.; fertilizer, from Richmond and Danville, Va., to points in Caswell, Rockingham, Orange, Person, and Alamance Counties, N.C.; lumber from Apex, N.C., and points within 100 miles of Apex, to Washington, D.C., and specified points and/or areas in Maryland, Pennsylvania and Virginia; fertilizer and fertilizer materials, from Norfolk, Va., and points in Virginia within 25 miles of Norfolk to points in North Carolina on and east of U.S. Highway 29; lumber, except plywood and veneer, from points in Sampson, Duplin, and New Hanover Counties, N.C., points in Onslow County, N.C., within 100 miles of Apex, N.C., and points in Pender County, N.C., on and west of U.S. Highway 117 and within 100 miles of Apex, N.C., to points in New York, New Jersey, Connecticut, Delaware, points in Pennsylvania in a specified area; from Clinton, N.C., and points in North Carolina within 25 miles of Norfolk to points in Florida; and from points in Pennsylvania (except Philadelphia), and points in New York (except points in the New York, N.Y., commercial zone, as defined by the Commission), to points in North Carolina. J. Linwood Keith, Post Office Box 45, Sanford, N.C., representative for applicants.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 64–13480; Filed, Dec. 30, 1964; 8:48 a.m.]

[S.O. 947, Taylor's Car Distribution Order 25; Amdt. 1]

SHORTAGE OF FREIGHT CARS

Order to All Railroads

Upon further consideration of Taylor's Car Distribution Order No. 25 and good cause appearing therefor:

It is ordered, That:

Taylor's Car Distribution Order No. 25 be, and it is hereby, amended by substituting the following paragraph (c) for paragraph (c) thereof:

(c) Expiration date: This order shall expire at 11:59 p.m., January 31, 1965, unless otherwise modified, changed, suspended, or annulled.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1964, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement, and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 24, 1964.

INTERSTATE COMMERCE COMMISSION,
[SEAL] CHARLES W. TAYLOR, *Agent.*

[F.R. Doc. 64–13481; Filed, Dec. 30, 1964; 8:48 a.m.]

[Rev. S.O. 562, Taylor's I.C.C. Order No. 178]

SOUTHERN PACIFIC CO.

Rerouting of Traffic

In the opinion of Charles W. Taylor, agent, the Southern Pacific Co., due to washouts and slides is unable to transport traffic routed over its line between Eugene, Oreg., and Dunsmuir, Calif.

It is ordered, That:

(a) Rerouting traffic: The Southern Pacific Co. being unable to transport traffic in accordance with shippers' routing because of washouts and slides on its line between Eugene, Oreg. and Dunsmuir, Calif., is hereby authorized to divert and reroute such traffic over any available route to expedite the movement regardless of the routing shown on the waybill. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) Inasmuch as the diversion or rerouting of traffic by said Agent is deemed to be due to carrier's disability, the rates applicable to traffic diverted or rerouted by said agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(c) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter

fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(d) Effective date: This order shall become effective at 2:00 p.m., December 23, 1964.

(e) Expiration date: This order shall expire at 11:59 p.m., January 15, 1965, unless otherwise modified, changed suspended, or annulled.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as Agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 23, 1964.

INTERSTATE COMMERCE COMMISSION,
[SEAL] CHARLES W. TAYLOR,
Agent.

[F.R. Doc. 64-13482; Filed, Dec. 30, 1964; 8:48 a.m.]

[Rev. S.O. 562, Taylor's I.C.C. Order No. 179]

WESTERN PACIFIC RAILROAD CO.

Rerouting of Traffic

In the opinion of Charles W. Taylor, agent, the Western Pacific Railroad Co., due to slides and washouts is unable to transport traffic routed over its lines between Oroville and Keddie, Calif.

It is ordered, That:

(a) Rerouting traffic: The Western Pacific Railroad Co. and its connections, being unable to transport traffic in accordance with shippers' routing because of slides and washouts on its line between Oroville and Keddie, Calif., is hereby authorized to divert or reroute such traffic over any available route to expedite the movement, regardless of the routing shown on the waybill. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) Concurrence of receiving roads to be obtained: The railroad desiring to divert or reroute traffic under this order shall confer with the proper transportation officer of the railroad or railroads to which such traffic is to be diverted or rerouted, and shall receive the concurrence of such other railroads before the rerouting or diversion is ordered.

(c) Inasmuch as the diversion or rerouting of traffic by said Agent is deemed to be due to carrier's disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(d) In executing the directions of the Commission and of such Agent provided for in this order, the common carrier involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to such traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(e) Effective date: This order shall become effective at 9:00 a.m., December 24, 1964.

(f) Expiration date: This order shall expire at 11:59 p.m., January 15, 1965, unless otherwise modified, changed, suspended, or annulled.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D.C., December 24, 1964.

INTERSTATE COMMERCE COMMISSION,
[SEAL] CHARLES W. TAYLOR,
Agent.

[F.R. Doc. 64-13483; Filed, Dec. 30, 1964; 8:48 a.m.]

[Rev. S.O. 562, Taylor's I.C.C. Order No. 180]

SPOKANE, PORTLAND AND SEATTLE RAILWAY SYSTEM

Rerouting of Traffic

In the opinion of Charles W. Taylor, agent, the Spokane, Portland and Seattle Railway System, due to floods and washouts is unable to transport traffic routed over its lines.

It is ordered, That:

(a) Rerouting traffic: The Spokane, Portland and Seattle Railway System and its connections, being unable to transport traffic in accordance with shippers' routing because of floods and washouts on its lines, is hereby authorized to divert or reroute such traffic over any available route to expedite the movement, regardless of the routing shown on the waybill. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) Concurrence of receiving roads to be obtained: The railroad desiring to divert or reroute traffic under this order shall confer with the proper transportation officer of the railroad or railroads to which such traffic is to be diverted or rerouted, and shall receive the concurrence of such other railroads before the rerouting or diversion is ordered.

(c) Inasmuch as the diversion or rerouting of traffic by said Agent is deemed to be due to carrier's disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(d) In executing the directions of the Commission and of such Agent provided for in this order, the common carrier involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to such traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(e) Effective date: This order shall become effective at 1:00 p.m., December 24, 1964.

(f) Expiration date: This order shall expire at 11:59 p.m., January 15, 1965, unless otherwise modified, changed, suspended, or annulled.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D.C., December 24, 1964.

INTERSTATE COMMERCE COMMISSION,
[SEAL] CHARLES W. TAYLOR,
Agent.

[F.R. Doc. 64-13484; Filed, Dec. 30, 1964; 8:48 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

Page

PROCLAMATIONS:
- 3030 (superseded by Proc. 3632) ... 19167
- 3630 ... 15941
- 3631 ... 16243
- 3632 ... 19167

EXECUTIVE ORDER:
- Jan. 7, 1903 (revoked in part by PLO 3516) ... 18423
- Mar. 31, 1911 (revoked in part by PLO 3493) ... 16859
- Dec. 31, 1912 (revoked in part by PLO 3487) ... 16829
- Sept. 30, 1916 (revoked in part by PLO 3508) ... 16864
- May 21, 1920 (revoked in part by PLO 3508) ... 16864
- 5289 (revoked in part by PLO 3486) ... 16830
- 10651 (revoked by E.O. 11190) ... 19183
- 11190 ... 19183

4 CFR

- 51 ... 16313
- 52 ... 16313

5 CFR

- 213 ... 17065, 17084, 17085, 17893, 18003, 18153, 18288.
- 890 ... 18045

7 CFR

- 15 ... 16274, 16966
- 29 ... 16854
- 58 ... 19091
- 81 ... 18474
- 401 ... 17029, 17085
- 701 ... 18149
- 717 ... 16184
- 719 ... 16185
- 722 ... 16428, 16775, 18003, 18004
- 724 ... 16077
- 728 ... 19092
- 729 ... 16185
- 730 ... 17086, 19232, 19233
- 751 ... 18007
- 777 ... 17086
- 811 ... 18149
- 812 ... 19223
- 814 ... 19092
- 817 ... 18151
- 850 ... 17029
- 855 ... 17029
- 905 ... 16313–16315
- 907 ... 16315, 16907, 17030, 17814, 18405, 18415
- 909 ... 17030
- 910 ... 16078, 16316, 17031, 18045, 18415
- 916 ... 16966
- 917 ... 16854, 19094
- 929 ... 16078
- 959 ... 19234
- 971 ... 19094
- 1004 ... 16966
- 1005 ... 16855
- 1032 ... 18046
- 1036 ... 18415
- 1046 ... 18416
- 1047 ... 18475
- 1049 ... 18476
- 1061 ... 18152
- 1062 ... 18049, 19235

7 CFR—Continued

Page

- 1063 ... 18007, 18051
- 1067 ... 18052
- 1070 ... 18008
- 1078 ... 18009
- 1079 ... 18010
- 1126 ... 19235
- 1136 ... 17815
- 1421 ... 15943, 18212
- 1427 ... 18213
- 1468 ... 18153
- 1472 ... 18153
- 1485 ... 17032
- 1600 ... 16784
- 1601 ... 16784

PROPOSED RULES:
- 26 ... 17816
- 51 ... 19109
- 301 ... 18509
- 812 ... 17122
- 911 ... 16258, 19259
- 912 ... 16993
- 915 ... 16258, 19259
- 917 ... 16993
- 971 ... 16833
- 980 ... 19260
- 1003 ... 18014
- 1004 ... 16994, 18429
- 1005 ... 16259
- 1030 ... 16395, 16417, 18091
- 1031 ... 16417
- 1036 ... 16197, 18091
- 1044 ... 16200
- 1046 ... 17908
- 1047 ... 17041, 17816
- 1049 ... 17816
- 1050 ... 17822
- 1065 ... 16920
- 1098 ... 18429
- 1126 ... 16198, 18434
- 1131 ... 16866, 17822
- 1135 ... 18380
- 1137 ... 18381

8 CFR

- 103 ... 18010

9 CFR

- 74 ... 15943
- 92 ... 18274
- 94 ... 16907
- 97 ... 16316
- 155 ... 18418

PROPOSED RULES:
- 201 ... 19261

10 CFR

- 2 ... 16831
- 4 ... 19277

PROPOSED RULES:
- Ch. I ... 15957
- 2 ... 16934
- 30 ... 17916, 17933
- 31 ... 17920
- 32 ... 17922
- 33 ... 17928
- 34 ... 17929
- 35 ... 17931
- 36 ... 17932
- 150 ... 17933

12 CFR

- 1 ... 17087, 18053
- 217 ... 15944, 16317

12 CFR—Continued

Page

- 218 ... 16065
- 224 ... 16855
- 329 ... 15944
- 525 ... 18154
- 545 ... 16856, 18154, 18156, 18213
- 561 ... 19236
- 563 ... 17088, 19236

PROPOSED RULES:
- 561 ... 18233
- 563 ... 18181

13 CFR

- 107 ... 16825, 16946, 16967
- 120 ... 18419
- 121 ... 15945

PROPOSED RULES:
- 107 ... 16094, 18016

14 CFR

- 1 [New] ... 18289, 19186
- 3 ... 17955
- 4a ... 18289
- 4b ... 18289
- 7 ... 16149
- 15 ... 19283
- 23 [New] ... 17955
- 25 [New] ... 18289
- 27 [New] ... 16065, 17885
- 29 [New] ... 16149
- 39 [New] ... 15945, 16065, 16066, 16317, 16318, 16967, 17035, 17797, 18353, 18477.
- 40 ... 19186
- 41 ... 19186
- 42 ... 16968, 19186
- 71 [New] ... 15945–15948, 16065, 16066, 16245, 16318, 16788, 16969–16972, 17036, 17037, 17088 17503, 17797, 18053–18055, 18156, 18213, 18354, 18478, 19096, 19185
- 73 [New] ... 15948, 16184, 16972, 17037, 17727, 18156, 18354.
- 75 [New] ... 16066, 16319, 17775, 19185
- 91 [New] ... 18289, 19096
- 93 [New] ... 15948
- 97 [New] ... 16067, 16789, 17798, 17886, 18479, 18488
- 121 [New] ... 19186
- 127 [New] ... 19096
- 129 [New] ... 19096
- 135 [New] ... 18478, 19096
- 141 [New] ... 19096
- 151 [New] ... 18000
- 171 [New] ... 19096
- 302 ... 16972
- 379 ... 19287
- 389 ... 16907
- 406 ... 19099
- 1204 ... 17892

PROPOSED RULES:
- 39 [New] ... 16429, 16430, 17044, 18093
- 71 [New] ... 15958, 16093, 16202–16204, 16260, 16431, 16833–16835, 16994, 16995, 16997, 17044–17046, 17823, 18014, 18015, 18093, 18095–18097, 18180, 18230, 18231, 18382, 13883, 18510, 19111
- 73 [New] ... 18510
- 75 [New] ... 16432, 16836, 18230

38 CFR

Page

3 ..... 16252, 16328, 17092
12 ..... 17903, 17904
17 18219
18 19301

39 CFR

16 16125
21 16252
22 ..... 16125, 16252
24 16125
25 16252
57 16858
61 16125
112 ..... 16858, 19089
151 18506
168 ..... 16858, 18506

PROPOSED RULES:

22 18093
96 18380

41 CFR

Ch. 1 18057
Ch. 2 17092
2 18477
4–1 17040
8–1 ..... 16323, 17903
8–2 16323
8–7 18013
9–9 17113
11–1 ..... 16252, 16255
11–2 ..... 16253, 16255
11–4 16253
11–14 16255
11–60 ..... 18368, 19091
Ch. 18 16502
101–6 ..... 15972, 16287
101–7 16797
101–8 16800
101–9 16800
101–10 16801
101–11 16807
101–12 16824
101–13 ..... 16824, 19091
101–18 ..... 15973, 19091
101–19 15978
101–20 15984
101–25 15990
101–27 15997
101–28 15998
101–29 16002
101–30 16004
101–40 16008
101–43 16012
101–44 16027
101–45 16035
101–47 16126

42 CFR

21 18288
51 ..... 16915, 17954
53 18447
55 16915
57 15952

43 CFR

17 16293
2230 19248
2320 19248
3130 19248
3210 19248
3220 19248
3630 19248
4130 19248

PUBLIC LAND ORDERS:

751 (revoked in part by PLO 3516) 18423

43 CFR—Continued

Page

PUBLIC LAND ORDERS—Continued

3359 (revoked in part by PLO 3478) 16827
3447 (corrected by PLO 3485) 16829
3464 16084
3465 16084
3466 16084
3467 16085
3468 16085
3469 16085
3470 16086
3471 16086
3472 16087
3473 16087
3474 16256
3475 16827
3476 16827
3477 16827
3478 16827
3479 16828
3480 16828
3481 16828
3482 16828
3483 16829
3484 16829
3485 16829
3486 16830
3487 16829
3488 16830
3489 16830
3490 16830
3491 16831
3492 16831
3493 16859
3494 16859
3495 16860
3496 16860
3497 16860
3498 16860
3499 16861
3500 16861
3501 16862
Corrected 18219
3502 16862
3503 16863
3504 16863
3505 16863
3506 16863
3507 16864
3508 16864
3509 16864
3510 16987
3511 16987
3512 16987
3513 17905
3514 17905
3515 17905
3516 18423
3517 19089

44 CFR

1 16832
2 16832
3 16832
4 16832
5 16832
6 16832
7 16832
55 15954
60 15954
100 ..... 15954, 19107
102 15954
110 16195
150 19107
151 19107
170 19107

44 CFR—Continued

Page

175 19107
176 19108
Ch. VII 16832

45 CFR

80 ..... 16298, 16988
150 15955
201 19250
202 19252
211 19252
212 19254
611 16305
701 17949
702 17950
703 17952
704 17953

46 CFR

146 18163
147 18163
309 19085
502 18171
506 ..... 16195, 17121

PROPOSED RULES:

Ch. IV 16433

47 CFR

0 18373
1 19255
2 19090
73 ..... 16196, 16916, 16988, 18172, 18373, 18376, 18423.
81 ..... 16196, 19256
83 19256
87 ..... 16865, 18377, 19256
89 ..... 18057, 18425
91 18219

PROPOSED RULES:

1 17823
2 17824
21 ..... 16204, 17840
25 ..... 17840, 17848
73 ..... 16205, 16207, 16837, 17850, 18384, 19261, 19262.

48 CFR

310 18059

49 CFR

0 ..... 16087, 19107
10 18426
71–79 18652
95 ..... 18062, 18377, 18378, 18426, 18427, 18506
176 ..... 16125, 19107
182 19104
184 19104
192 16256

PROPOSED RULES:

Ch. I 19262
10 18437
71–78 18511
170 17850

50 CFR

2 17905
11 17905
14 17906
16 17905
32 ..... 17906, 18378
33 ..... 16917, 16918, 17814, 17906, 17907, 18229, 19257, 19258.
256 16088
257 16990

Pages 19275–19304

PART II

THE NATIONAL ARCHIVES
LITTERA SCRIPTA MANET
1934
OF THE UNITED STATES

FEDERAL REGISTER

VOLUME 29 NUMBER 254

Washington, Thursday, December 31, 1964

Effectuation of Title VI of the Civil Rights Act of 1964

Nondiscrimination in Federally-Assisted Programs of—

Department of the Treasury
Department of Defense
Atomic Energy Commission
Civil Aeronautics Board
Federal Aviation Agency
Veterans Administration

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED COMMISSION PROGRAMS OF THE ATOMIC ENERGY COMMISSION

Effectuation of Title VI of the Civil Rights Act of 1964

The Atomic Energy Commission hereby amends its regulations by adding the following new Part 4, "Nondiscrimination in Federally Assisted Commission Programs".

Pursuant to the Civil Rights Act of 1964 and the Administrative Procedure Act of 1946, the following new Part 4 of Title 10, Chapter I, Code of Federal Regulations, is published as a document subject to codification to be effective on the thirtieth day following its publication in the FEDERAL REGISTER.

GENERAL PROVISIONS

AUTHORITY: The provisions of this Part 4 issued under sec. 602, 78 Stat. 252. Interpret or apply Atomic Energy Act of 1954 as amended, 68 Stat. 919; 424, S.C. 2011.

GENERAL PROVISIONS

§ 4.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from AEC.

§ 4.2 Application of this part.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by AEC. The programs to which this part applies are listed in Appendix A of this part; Appendix A may be revised from time to time by notice published in the FEDERAL REGISTER. This part applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved prior to such effective date, and to any such assistance extended at any time pursuant to a grant, loan, or contract by AEC, the terms of which require compliance with this part, or pursuant to an AEC-authorized grant, loan, or contract by a contractor or subcontractor of AEC, the terms of which require compliance with this part.

(b) This part does not apply to (1) any Federal financial assistance by way of insurance or guaranty contracts, (2) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, except as provided in paragraph (a) of this section, (3) any assistance to any individual who is the ultimate beneficiary under any such program, or (4) any employment practice, under any such program, of any employer, employment agency, or labor organization, except as provided in § 4.13.

§ 4.3 Definitions.

(a) "Applicant" means one who submits an application, request, or plan required to be approved by AEC, or by a primary recipient, as a condition to eligibility for Federal financial assistance; "application" means such an application, request, or plan.

(b) "Commission" means the Commission of five members or a quorum thereof sitting as a body; "AEC" means the Atomic Energy Commission and its duly authorized representatives.

(c) "Facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(d) "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel or of other personnel at Federal expense, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(e) "Hearing examiner" means an individual appointed pursuant to section 11 of the Administrative Procedure Act to conduct proceedings subject to this part.

(f) "Primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(g) "Program" includes any program, project, or activity designated in Appendix A of this part for the provision of services, financial aid, or other benefits to individuals (including education or training) whether provided through employees of the recipient or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals, or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(h) "Recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(i) "Responsible AEC official" means:

(1) The General Manager or any officer to whom he has delegated authority to act; or

(2) The Director of Regulation or any officer to whom he has delegated authority to act;

within their respective areas of responsibility assigned by the Commission.

(j) "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

§ 4.4 Communications and reports.

Except where otherwise indicated, all communications and reports relating to this part shall be addressed to the United States Atomic Energy Commission, Washington, D.C., 20545. Communications and reports may be delivered in person to the Commission's offices at 1717 H Street NW., Washington, D.C., or its offices at Germantown, Md.

DISCRIMINATION PROHIBITED

§ 4.11 General prohibition.

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

§ 4.12 Specific discriminatory actions prohibited.

(a) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(1) Deny an individual any service, financial aid, or other benefit provided under the program;

(2) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(5) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in § 4.13).

(b) A recipient in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(c) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(d) The enumeration of specific forms of prohibited discrimination in this section and § 4.13 does not limit the generality of the prohibition in § 4.11.

§ 4.13 Employment practices.

Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, lay-off or termination, up-grading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (a) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, or (b) to provide work experience which contributes to the education or training of such individuals. (Examples of such programs are nuclear training equipment grants, grants and loans of materials for training, and fellowship programs.) The requirements applicable to construction employment under any such program shall be those specified in and pursuant to Executive Order 11114.

§ 4.14 Medical emergencies.

A recipient shall not be deemed to have failed to comply with § 4.11 if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with § 4.11.

ASSURANCES REQUIRED

§ 4.21 General requirements.

(a) Every grant, loan or contract under a program to which this part applies, except a program to which § 4.22 applies, shall, as a condition to its approval by AEC, or by the appropriate AEC contractor or subcontractor, and the extension of any Federal financial assistance pursuant thereto, contain or be accompanied by an assurance that the program will be conducted in compliance with all requirements imposed by or pursuant to this part. In the case of a grant, loan or contract involving Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the grant, loan or contract. The Commission will specify the form of the foregoing assurances for each program and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(b) The assurance required in the case of a transfer of real property, except where covered by paragraph (c) of this section, shall be inserted in the instrument effecting the transfer of any such land, together with any improvements located thereon, and shall consist of (1) a condition coupled with a right to be reserved to AEC to revert title to the property in the event of breach of such nondiscrimination condition during the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, and (2) a covenant running with the land for the same period. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Commission may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(c) Transfers of surplus property are subject to regulations issued by the Ad-

ministrator of General Services (41 CFR 101–6.2).

§ 4.22 Continuing State programs.

Every grant, loan or contract to or with a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies, shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the grant, loan or contract,

(a) Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, or a statement of the extent to which it is not, at the time the statement is made, so conducted, and

(b) Provide or be accompanied by provision for such methods of administration for the program as are found by the responsible AEC official to give reasonable assurance that the recipient and all other recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part, including methods of administration which give reasonable assurance that any noncompliance indicated in the statement provided for in paragraph (a) of this section will be corrected.

§ 4.23 Elementary and secondary schools.

The requirements of §§ 4.21 and 4.22 with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system,

(a) Is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or

(b) Submits a plan for the desegregation of such school or school system which the Commissioner of Education determines is adequate to accomplish the purposes of the Act and this part, and provides reasonable assurance that it will carry out such plan. In any case of continuing Federal financial assistance the Commissioner may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purpose of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such plan, such plan shall be revised to conform to such final order, including any future modification of such order.

§ 4.24 Assurances from institutions.

(a) In the case of a grant, loan or contract involving Federal financial assistance to an institution of higher education, the assurance required by § 4.21 shall extend to admission practices and to all other practices relating to the treatment of students.

(b) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the institution establishes, to the satisfaction of the responsible AEC official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 4.25 Illustrative applications.

The following examples will illustrate the application of the foregoing provisions to some of the major AEC programs designated in Appendix A. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by Title VI of the Act and this part, as a condition of the receipt of Federal financial assistance.)

(a) In a grant, loan or contract for education or training by a university in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university unless it satisfies the responsible AEC official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

(b) In an education or training grant to a hospital or other nonacademic institution, discrimination is prohibited in the selection of individuals to be educated or trained and in their treatment by the grantee during their education or training. In an equipment grant pertaining to research or demonstration by such an institution, discrimination is prohibited with respect to any educational activity and any provision of medical or other services and any financial aid to individuals incident to the program.

(c) In a program to assist in the construction or equipping of facilities for the performance of research, assurances will be required that the benefits derived and to be derived therefrom will be provided without discrimination, to the same extent that discrimination would be prohibited as a condition of Federal operating grants for the support of such benefits. Thus, as a condition of grants for the construction or equipping of academic, research, or other facilities at institutions of higher education, assurances will be required that there will be no discrimination in the admission or treatment of students. In the case of equipment grants to hospitals, the assurance will apply to patients, to interns, residents, student nurses, and other trainees, and to the privilege of physicians, dentists, and other professionally qualified persons to practice in the hospital, and will apply to the entire facility for which, or for a part of which, the grant is made, and to facilities operated in connection therewith.

COMPLIANCE INFORMATION

§ 4.31 Cooperation and assistance.

The responsible AEC official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

§ 4.32 Compliance reports.

Each recipient shall keep such records and submit to the responsible AEC official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible AEC official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

§ 4.33 Access to sources of information.

Each recipient shall permit access by the responsible AEC official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and that agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

§ 4.34 Information to beneficiaries and participants.

Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible AEC official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

CONDUCT OF INVESTIGATIONS

§ 4.41 Periodic compliance reviews.

The responsible AEC official shall from time to time review the practices of recipients to determine whether they are complying with this part.

§ 4.42 Complaints.

Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a

representative file with the responsible AEC official a written complaint. A complaint must be filed not later than ninety (90) days from the date of the alleged discrimination, unless the time for filing is extended by the responsible AEC official. A complaint shall be signed by the complainant or his representative.

§ 4.43 Investigations.

The responsible AEC official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

§ 4.44 Resolution of matters.

(a) If an investigation pursuant to § 4.43 indicates a failure to comply with this part, the responsible AEC official will so inform the recipient and the matter will be resolved by voluntary means whenever possible. If it has been determined that the matter cannot be resolved by voluntary means, action will be taken as provided for in §§ 4.46–4.49.

(b) If an investigation does not warrant action pursuant to paragraph (a) of this section, the responsible AEC official will so inform the recipient and the complainant, if any, in writing.

§ 4.45 Intimidatory or retaliatory acts prohibited.

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential, except to the extent necessary to carry out the purposes of this part including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

MEANS OF EFFECTING COMPLIANCE

§ 4.46 Means available.

If there appears to be a failure or threatened failure to comply with any of the provisions of this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (a) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (b) any applicable proceeding under State or local law.

§ 4.47 Noncompliance with § 4.21.

If an applicant fails or refuses to furnish an assurance required under § 4.21 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of § 4.48. The AEC shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under § 4.48, except that the AEC shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to a grant, loan, or contract therefor approved prior to the effective date of this part.

§ 4.48 Termination of or refusal to grant or to continue Federal financial assistance.

No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (a) the responsible AEC official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (b) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with the requirement imposed by or pursuant to this part, (c) the action has been approved by the Commission pursuant to § 4.72, and (d) the expiration of thirty (30) days after the Commission has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

§ 4.49 Other means authorized by law.

No action to effect compliance by any other means authorized by law shall be taken until (a) the responsible AEC official has determined that compliance cannot be secured by voluntary means, (b) the action has been approved by the Commission, (c) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (d) the expiration of at least ten (10) days from the mailing of such notice to the recipient or other person. During this period of at least ten (10) days, additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

OPPORTUNITY FOR HEARING

§ 4.51 Notice of opportunity for hearing.

(a) Whenever an opportunity for hearing is required by § 4.48, the responsible AEC official shall serve on the applicant or recipient, by registered or certified mail, return receipt requested, a notice of opportunity for hearing which will:

(1) Inform the applicant or recipient of his right within twenty (20) days of the date of the notice of opportunity for hearing, or such other period as may be specified in the notice, to request a hearing;

(2) Set forth the alleged item or items of noncompliance with this part;

(3) Specify the issues;

(4) State that compliance with this part may be effected by an order providing for the termination of or refusal to grant or to continue assistance, as appropriate, under the program involved; and

(5) Provide that the applicant or recipient may file a written answer to the notice of opportunity for hearing under oath or affirmation within twenty (20) days of its date, or such other period as may be specified in the notice.

(b) The applicant or recipient may respond to a notice of opportunity for hearing by filing a written answer under oath or affirmation. The answer shall specifically admit or deny each allegation, or, where the applicant or recipient does not have knowledge or information sufficient to form a belief, the answer may so state and the statements shall have the effect of a denial. Allegations of fact not denied shall be deemed to be admitted. The answer shall separately state and identify matters alleged as affirmative defenses and may also set forth the matters of fact and law on which the applicant or recipient relies. The answer may request a hearing.

(c) If the answer requests a hearing, the Commission will issue a notice of hearing specifying:

(1) The time, place, and nature thereof;

(2) The legal authority and jurisdiction under which the hearing is to be held; and

(3) The matters of fact and law asserted or to be considered. The time and place of hearing will be fixed with due regard for the convenience and necessity of the parties or their representatives and for the public interest. An answer to a notice of hearing is not required.

(d) An applicant or recipient may waive a hearing and submit written information or argument for the record, without waiving the requirement for findings of fact and conclusions of law or the right to seek Commission review in accordance with the provisions of §§ 4.71–4.74.

(e) An answer or stipulation may consent to the entry of an order in substantially the form set forth in the notice of opportunity for hearing; such order may be entered by the responsible Commission official. The consent of the applicant or recipient to the entry of an order shall constitute a waiver by him of a right to (1) a hearing under section 602 of the Act and § 4.48, (2) findings of fact and conclusions of law, and (3) seek Commission review.

(f) The failure of the applicant or recipient to request a hearing and file an answer within the period prescribed, or, having requested a hearing, his failure to appear therefor, shall constitute

a waiver by him of a right to (1) a hearing under section 602 of the Act and § 4.48, (2) conclusions of law, and (3) seek Commission review. In the event of such waiver, the responsible Commission official may find the facts on the basis of the record available and enter an order in substantially the form set forth in the notice of opportunity for hearing.

(g) An order entered in accordance with paragraph (e) or (f) of this section shall constitute the final decision of the Commission, unless the Commission, on its own motion, within forty-five (45) days after entry of the order, issues its own decision, which shall then constitute the final decision of the Commission.

(h) A copy of an order entered by the responsible AEC official shall be mailed to the applicant or recipient and to the complainant, if any.

(i) Nothing in this section shall be deemed to place the burden of proof on the applicant or recipient.

HEARINGS AND FINDINGS

§ 4.61 Presiding officer.

One or more members of the Commission or one or more hearing examiners appointed pursuant to section 11 of the Administrative Procedure Act shall (a) preside at a hearing, and (b) make findings of fact and conclusions of law if an applicant or recipient waives a hearing and submits written information or argument for the record in accordance with § 4.51(d).

§ 4.62 Right to counsel.

In all proceedings under §§ 4.51–4.81, the applicant or recipient and the responsible AEC official shall have the right to be represented by counsel. A notice of appearance shall be filed by counsel prior to participation in any such proceedings.

§ 4.63 Procedures, evidence, and record.

(a) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such procedures as are proper (and not inconsistent with §§ 4.61–4.64) relating to the conduct of the hearing, giving of notices subsequent to those provided for in § 4.51, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the responsible AEC official and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice of hearing or as determined by the presiding officer at the outset of or during the hearing.

(b) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(c) Each decision made after a hearing has been held shall be based on the hearing record, and written findings of fact and conclusions of law shall be made.

(d) If an applicant or recipient waives a hearing and submits written information or argument for the record in accordance with § 4.51(d), written findings of fact and conclusions of law shall be made.

§ 4.64 Consolidated or joint hearings.

In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Commission may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as programs subject to this part are concerned, shall be made in accordance with § 4.72.

DECISIONS AND NOTICES

§ 4.71 Initial decision or certification.

The officer designated

(a) To preside at a hearing, or,

(b) To make findings of fact and conclusions of law if an applicant or recipient waives a hearing and submits written information or argument for the record in accordance with § 4.51(d),

shall render an initial decision on the record, or, if the Commission so directs, shall certify the entire record to the Commission for decision, together with a recommended decision on the record. A copy of such initial decision, or of such certification and recommended decision, shall be mailed to the applicant or recipient.

§ 4.72 Exceptions and final decision.

(a) The applicant or recipient, within thirty (30) days of the mailing of an initial decision or a recommended decision, may file with the Commission his exceptions to such decision, with his reasons therefor.

(b) In the absence of exceptions to an initial decision, the Commission may, on its own motion within forty-five (45) days after the mailing of such initial decision, serve on the applicant or recipient a notice that the Commission will review the decision.

(c) Upon the filing of exceptions to an initial decision or of a notice of review, the Commission shall review such initial decision and issue its own decision on the record with its reasons therefor.

(d) In the absence of either exceptions to an initial decision or of a notice of review, such initial decision shall constitute the final decision of the Commission.

(e) Upon the filing of exceptions to a recommended decision, the Commission shall review such recommended decision and issue its own decision on the record with its reasons therefor.

(f) In the absence of exceptions to a recommended decision, the Commission shall review such recommended decision and issue its own decision on the record with its reasons therefor.

§ 4.73 Rules requried.

Each decision of a presiding officer or the Commission shall set forth the rulings on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

§ 4.74 Content of orders.

The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the AEC that it will fully comply with this part. A copy of the final decision shall be mailed to the applicant or recipient and the complainant, if any.

JUDICIAL REVIEW

§ 4.81 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

EFFECT ON OTHER REGULATIONS; FORMS AND INSTRUCTIONS

§ 4.91 Effect on other regulations.

All regulations, orders, or like directions heretofore issued by any officer of the AEC which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (a)

Executive Orders 10925 and 11114 and regulations issued thereunder, or (b) Executive Order 11063 and regulations issued thereunder and any other regulations or instructions insofar as such Order, regulations or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

§ 4.92 Forms and instructions.

The responsible AEC official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

§ 4.93 Supervision and coordination.

The Commission may from time to time assign to officials of other departments or agencies of the Government, with the consent of the department or agency involved, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part, other than responsibility for final decision as provided in § 4.72, including the achievement of effective coordination and maximum uniformity within the AEC and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations.

Dated: December 10, 1964.

GLENN T. SEABORG,
Chairman,
Atomic Energy Commission.

Approved: December 28, 1964.

LYNDON B. JOHNSON.

APPENDIX A—PROGRAMS TO WHICH THIS PART APPLIES [1]

(a) *Equipment grants for basic and applied research.* Equipment grants, relating to basic and applied research in nuclear fields, to nonprofit institutions of higher education and to nonprofit organizations whose primary purpose is the conduct of scientific research.

(b) *Nuclear training equipment grants.* Nuclear training equipment grants to colleges, universities, hospitals and eleemosynary or charitable institutions to help equip and modernize their scientific laboratories with respect to nuclear instrumentation and related equipment, with the objective of improving the conduct of educational and training activities in nuclear fields.

(c) *Grants of materials for training.* Grants of slides, manuals and other materials to educational institutions for training and educational programs in nuclear fields.

(d) *Special fellowships.* Fellowships programs, providing for AEC payment of tuition and fees to educational institutions as well as stipends and dependency allowances to the individual fellows, to encourage highly qualified individuals to prepare for careers in atomic energy and to assist education institutions in developing nuclear science capabilities, as follows:

(1) AEC special fellowships in nuclear science and engineering.

(2) AEC special fellowships in health physics.

(3) AEC special fellowships in advanced health physics.

(4) AEC special fellowships in industrial medicine.

(e) *Graduate fellowships.* AEC laboratory graduate fellowships to provide graduate students the opportunity to conduct their M.S. and Ph. D. thesis research at AEC-owned facilities, and with respect to which AEC pays tuition and fees to the sponsoring institution as well as stipends and dependency allowances to the students.

(f) *Loan of nuclear and other materials for education and training.* Loans of AEC materials, without full-cost recovery, to supplement the grant program of paragraph (b) of this section, providing AEC-owned materials, such as natural and enriched uranium, plutonium and heavy water, to educational institutions, on a loan basis, without charge for use; and loans of films, slides, manuals and other materials to educational institutions, without full-cost recovery.

(g) *Loan of isotopes.* Loans of certain isotopes, without full-cost recovery, to assist institutions conducting research and development in atomic energy fields.

(h) *Other grants, loans or services.* Other grants or loans of AEC materials or of other items of Government property, or provision of Government services or facilities, including security-clearances, without full-cost recovery.

(i) *Acquisition of nuclear reactor for research and training.* Research reactor assistance, without full-cost recovery, designed to aid nonprofit educational institutions having graduate level science and engineering programs to acquire nuclear reactors for research and training purposes, and providing the following principal forms of aid:

(1) Loan of enriched uranium; and

(2) Funds for fuel element fabrication and reprocessing.

(j) *Faculty institute programs.* Faculty institute programs, without full-cost recovery, designed to enable educational institutions, including secondary schools, to prepare faculty for teaching the latest developments in nuclear science and technology.

(k) *Power reactor demonstration.* AEC's power reactor demonstration program to encourage the development and demonstration of power reactors for civilian purposes, providing for waiver of use charges with respect to AEC-owned materials, or research and development, design or other types of assistance, without full-cost recovery.

(l) *Conferences on regulatory programs.* Agreements for financial assistance to State officials, without full-cost recovery, for visits to AEC facilities and offices or to other locations to confer on regulatory programs and related matters.

(m) *Orientation and instruction.* Agreements for assistance to State and local officials, without full-cost recovery, to receive orientation and on-the-job instruction at AEC facilities and offices.

(n) *Courses in fundamentals of radiation.* Agreements for the conduct of courses for State and local employees, without full-cost recovery, in fundamentals of radiation and radiation protection.

(o) *Participation in meetings and conferences.* Agreements for participation, without full-cost recovery, in meetings, conferences, workshops, and symposia to assist scientific, professional or educational institutions or groups.

(p) *Faculty and student use of AEC facilities.* Agreements permitting university faculty and students, without full-cost recovery, to make use of AEC facilities not available on their own campuses.

(q) *AEC assistance provided through AEC cost-type contractors.* Agreements by AEC laboratories or other AEC cost-type contractors to provide assistance, at AEC expense and without full-cost recovery, in connection with AEC programs or activities, of the types designated in this section.

(r) *Payments in lieu of taxes.* Programs for assistance to States and localities in which AEC activities are carried on, and in which AEC has acquired property previously subject to State and local taxation, involving payments to State and local governments in lieu of property taxes.

(s) *Assistance to communities.* Agreements for assistance to States, counties and local entities under the Atomic Energy Community Act of 1955, as amended.

[F.R. Doc. 64-13516; Filed, Dec. 30, 1964; 8:51 a.m.]

[1] Programs may be added to Appendix A from time to time by notice published in the FEDERAL REGISTER. This part shall be deemed to apply to all grants, loans or contracts entered into under any such program on or after the effective date of the inclusion of the program in Appendix A.

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Docket No. 6388]

PART 15—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE FEDERAL AVIATION AGENCY—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The purpose of this amendment adding Part 15 to the Federal Aviation Regulations is to implement section 601 of the Civil Rights Act of 1964 (P.L. 88-352).

Section 601 of the Civil Rights Act of 1964 forbids discrimination on the ground of race, color, or national origin under any program or activity that receives Federal financial assistance. Section 602 of the Civil Rights Act of 1964 authorizes and directs each Federal department or agency that is empowered to assist any program or activity to issue regulations implementing section 601. Accordingly, the Federal Aviation Agency is adopting a new Part 15 to accomplish this legislative directive.

In consideration of the foregoing, Chapter I of Title 14 of the Code of Federal Regulations is amended by adding a new Part 15, as hereinafter set forth, effective 30 days after publication in the FEDERAL REGISTER.

Sec.

AUTHORITY: The provisions of this Part 15 issued under sec. 602, Civil Rights Act of 1964 (42 U.S.C. 501), and the laws referred to in Appendix A.

§ 15.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (in this part referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Federal Aviation Agency.

§ 15.3 Applicability.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the FAA including the Federally-assisted programs and activities listed in Appendix A of this part. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved before that date.

(b) This part does not apply to:

(1) Any Federal financial assistance by way of insurance or guaranty contracts;

(2) Money paid, property transferred, or other assistance extended under any such program before the effective date of this part;

(3) Any assistance to any individual who is the ultimate beneficiary under any such program; or

(4) Any employment practice, under any such program, of any employer, employment agency, or labor organization.

(c) The fact that a program or activity is not listed in Appendix A does not mean, if Title VI of the Act is otherwise applicable, that the program is not covered. Other programs under statutes in force on the effective date of this part or enacted after that date may be added to this list by notice published in the FEDERAL REGISTER.

§ 15.5 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin—

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual that is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition that individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program; or

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so that is different from that afforded others under the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(3) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance are considered to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(c) *Examples.* The following examples illustrate the application of the non-discrimination provisions of Title VI of the Civil Rights Act and this part:

(1) The operator of an airport who is the recipient of Federal financial assistance must give assurance that an entrepreneur who rents space at the airport and there operates a restaurant will not in any manner discriminate between patrons for reasons of race, color, or national origin.

(2) The operator of an airport who is the recipient of Federal financial assistance is bound by the conditions and covenants in the conveyance that prohibit, among other things, discrimination for reason of color, race, or national origin in admission of the public to waiting rooms, sightseeing areas, sanitary facilities, and any other facilities under the control of the airport operator himself.

§ 15.7 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, and every application for Federal financial assistance to provide a facility, shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where a facility is comprised of real property for which application is made under a program and, in addition, other real property of the applicant, the assurance applies to the entire facility. In the case of personal property the assurance obligates

the recipient for the period during which he retains ownership or possession of the property. The Administrator specifies the form of the assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR 101–6.2).

(b) *Pre-existing contracts—funds not disbursed.* In any case where a contract for Federal financial assistance, to carry out a program or activity to which this part applies, has been executed before the effective date of this part, and the funds have not been fully disbursed by the FAA, the Administrator requires an assurance similar to that provided in paragraph (a) of this section as a condition to the disbursement of further funds.

§ 15.9 Compliance information.

(a) *Cooperation and assistance.* To the fullest extent practicable the Administrator seeks the cooperation of recipients in obtaining compliance with this part and provides assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Administrator timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Administrator may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part.

(c) *Access to sources of information.* Each recipient shall permit access by the Administrator during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person, and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Administrator finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 15.11 Conduct of investigations.

(a) *Periodic compliance reviews.* The Administrator shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Administrator a written complaint. A complaint must be filed not later than 90 days after the date of the alleged discrimination, unless the time for filing is extended by the Administrator.

(c) *Investigations.* The Administrator will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Administrator will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 15.13.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the Administrator will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or by this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 15.13 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include:

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking; and

(2) Any applicable proceeding under State or local law.

(b) *Noncompliance with § 15.7.* If an applicant fails or refuses to furnish an assurance required under § 15.7 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The FAA is not required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the FAA shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance may become effective until:

(1) The Administrator has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Administrator pursuant to § 15.17 (e); and

(4) The expiration of 30 days after the Administrator has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved a full written report of the circumstances and the grounds for such action.

Any action to suspend or terminate or to refuse to grant or continue Federal financial assistance is limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and is limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law may be taken until:

(1) The Administrator has determined that compliance cannot be secured by voluntary means;

(2) The action has been approved by the Administrator;

(3) The recipient or other person has been notified of his failure to comply and of the action to be taken to effect compliance; and

(4) The expiration of at least 10 days after the mailing of such notice to the recipient or other person.

During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the part and to take such corrective action as may be appropriate.

§ 15.15 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 15.13(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Administrator that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time.

The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set is considered to be a waiver of the right to a hearing under section 602 of the Act and § 15.13(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the FAA in Washington, D.C., at a time fixed by the Administrator unless he determines that the convenience of the applicant or recipient or of the FAA requires that another place be selected. Hearings shall be held before the Administrator or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the FAA have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5 through 8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the FAA and the applicant or recipient may introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record are open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Administrator may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 15.17.

§ 15.17 Decisions and notices.

(a) *Decision by person other than the Administrator.* If the hearing is held by a hearing examiner the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Administrator for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days after the mailing of such notice of initial decision file with the Administrator his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Administrator may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the Administrator shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision constitutes the final decision of the Administrator.

(b) *Decisions on record or review by the Administrator.* Whenever a record is certified to the Administrator for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Administrator conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the Administrator shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 15.15(a) a decision shall be made by the Administrator on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or the Administrator shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Administrator.* Any final decision of any official of the FAA (other than the Administrator) that provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Administrator, who may personally approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision, may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Administrator that it will fully comply with this part.

§ 15.19 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 15.21 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions issued by any official of the FAA before the effective date of this part and which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction before the effective date of this part. Nothing in this part, however, supersedes any of the following (including future amendments thereof):

(1) Executive Orders 10925 and 11114 and regulations issued thereunder; or

(2) Any other regulations or instructions, insofar as such regulations or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The FAA will issue and promptly make available to interested persons forms and detailed instructions and procedures necessary for effectuating this part as applied to programs to which this part applies.

(c) *Supervision and coordination.* The Administrator may from time to time assign to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 15.17), including the achievement of effective coordination and maximum uniformity within the Executive Branch of the Government in the application of title VI and this part to similar programs and in similar situations.

§ 15.23 Definitions.

As used in this part—

(a) "Federal financial assistance" includes:

(1) Grants and loans of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and

(5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(b) "Program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(c) "Facility" includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(d) "Recipient" means any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(e) "Primary recipient" means any recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(f) "Applicant" means a person who submits an application, request, or plan required to be approved by the Administrator, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

Issued in Washington, D.C., on December 14, 1964.

N. E. HALABY,
Administrator.

Approved: December 28, 1964.

LYNDON B. JOHNSON.

APPENDIX A

PROGRAMS TO WHICH THIS PART APPLIES

1. Federal-aid Airport Program (Secs. 1–15 and 17–20 of the Federal Airport Act, 49 U.S.C. 1101–1114, 1116–1120).

2. Acquisition of U.S. Land for Public Airports:

a. Section 16 of the Federal Airport Act (49 U.S.C. 1115); and

b. Surplus Property Act (sec. 13(g) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(g), and sec. 3 of the Act of October 1, 1949, 50 U.S.C. App. 1622b).

[F.R. Doc. 64–13517; Filed, Dec. 30, 1964; 8:51 a.m.]

Chapter II—Civil Aeronautics Board

SUBCHAPTER D—SPECIAL REGULATIONS

PART 379—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE BOARD—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Subchapter D, Chapter II, title 14 CFR is hereby amended by adding the following new Part 379:

Sec.

AUTHORITY: The provisions of this Part 379 are issued under sec. 602, 78 Stat. 252; and sections 102, 204, 404, 406, and 1002 of the Federal Aviation Act of 1958; 72 Stat. 740, 743, 760, 763, and 788; 49 U.S.C. 1302, 1324, 1374, 1376, and 1482.

§ 379.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Civil Aeronautics Board.

§ 379.2 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Board, including the payment of compensation by the Board under section 406 of the Federal Aviation Act of 1958 (49 U.S.C. 1376). It applies to money paid or other Federal financial assistance extended under any such program after the effective date of the part pursuant to a Board order, whether issued prior to or subsequent to such effective date, establishing a rate of compensation under section 406, or pursuant to an application for any other such Federal payment or financial assistance, whether approved prior to or subsequent to such effective date. This part does not apply to (a) money paid or other assistance extended under any such program before the effective date of this regulation, or (b) any employment practice, under any such program, of any employer, employment agency, or labor organization.

§ 379.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* No air carrier shall subject any person to discrimination on the ground of race, color, or national origin in connection with any air transportation for which such carrier is receiving or has claimed compensation payable by the Board under section 406 of the Federal Aviation Act of 1958.

§ 379.4 Assurances required.

Every applicant for or recipient of Federal financial assistance to which this part applies shall, as a condition to approval of its application and/or the extension of any such Federal financial assistance, furnish with the application, or on request of the Board in the case of compensation received pursuant to an investigation instituted under section 406 of the Federal Aviation Act of 1958 by the Board or a person other than the recipient of such compensation, an assurance that the applicant or recipient will comply with all requirements imposed by or pursuant to this part. The Board's request for such assurance will normally be made at the time of or in any Board order instituting an investigation under section 406.

§ 379.5 Compliance information.

(a) *Compliance reports.* Each recipient shall keep such records and submit to the Board timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Board may determine to be necessary to enable it to ascertain whether the recipient has complied or is complying with this part.

(b) *Access to sources of information.* Each recipient shall permit access by designated Board personnel during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part.

(c) *Information to passengers and shippers.* Each recipient shall make available to passengers, shippers, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Board finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 379.6 Conduct of investigations.

(a) *Periodic compliance reviews.* The Board or its designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Board a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the Board.

(c) *Investigations.* The Board or its designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Board or its designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 379.7.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the Board or its designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 379.7 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 379.4.* If an applicant, or recipient, or other person who has received a Board request for an assurance required under § 379.4 fails or refuses to furnish such assurance or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Board shall not be required to provide assistance in such a case during the pendency of the administrative

proceedings under such subsection except that the Board shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application or Board order therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the Board has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, and (3) the expiration of 30 days after the Board has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved a full written report of the circumstances and the grounds for such action.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the Board has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 379.8 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 379.7(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Board that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 379.7(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Board in Washington, D.C., at a time fixed by the Board unless it determines that the convenience of the applicant or recipient or of the Board requires that another place be selected. Hearings shall be held before the Board or, at its discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Board shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Board and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Board may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 379.9.

§ 379.9 Decisions and notices.

(a) *Decision by person other than the Board.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Board for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner, the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the Board his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Board may on its own motion within 45 days after the initial decision serve on the applicant or recipient a notice that it will review the decision. Upon the filing of such exceptions or of such notice of review the Board shall review the initial decision and issue its own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review, the initial decision shall constitute the final decision of the Board.

(b) *Decisions on record or review by the Board.* Whenever a record is certified to the Board for decision or it reviews the decision of a hearing examiner pursuant to paragraph (a) of this section or whenever the Board conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with the Board briefs or other written statements of its contentions, and a copy of the final decision of the Board shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 379.8(a), a decision shall be made by the Board on the record, and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or the Board shall set forth rulings on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Board that it will fully comply with this part.

§ 379.10 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 379.11 Effect on other remedies; coordination.

(a) *Effect on other statutory remedies.* Notwithstanding the provisions of § 379.7, nothing contained in this part shall in any way abridge or alter other statutory remedies now existing for the elimination of discrimination by air carriers, but the provisions of this part are in addition to such remedies.

(b) *Effect on other regulations.* Nothing in this part shall be deemed to supersede any other regulations or instructions, insofar as such regulations or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(c) *Supervision and coordination.* The Board may from time to time assign to officials of the Board, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 379.9), including the achievement of effective coordination and maximum uniformity within the Board and with other departments and agencies of the Government in the application of title VI and this part to similar programs and in similar situations.

§ 379.12 Definitions.

As used in this part—

(a) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States.

(b) The term "Federal financial assistance" includes grants of Federal funds under section 406 of the Federal Aviation Act of 1958.

(c) The term "recipient" means any air carrier to whom Federal financial assistance is extended or whose rate of compensation payable by the Board under section 406 of the Federal Aviation Act of 1958 is the subject of a formal Board investigation.

(d) The term "applicant" means one who submits an application required to be approved by the Board as a condition to eligibility for Federal financial assistance.

Effective date. This part shall become effective on the 30th day following the date of its publication in the FEDERAL REGISTER.

Dated: December 18, 1964.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

Approved: December 28, 1964.

LYNDON B. JOHNSON.

[F.R. Doc. 64-13518; Filed, Dec. 30, 1964; 8:51 a.m.]

Title 32—NATIONAL DEFENSE

SUBTITLE A—DEPARTMENT OF DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER Q—CIVIL RIGHTS

PART 300—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF DEFENSE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

AUTHORITY: The provisions of this Part 300 issued under Public Law 88-352, the Civil Rights Act of 1964; 78 Stat. 241, July 2, 1964.

§ 300.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from any component of the Department of Defense.

§ 300.2 Definitions.

(a) "Component" means the Office of the Secretary of Defense, a military department or a Defense agency.

(b) "Responsible Department official" means the Secretary of Defense or other official of the Department of Defense or component thereof who by law or by delegation has the principal responsibility within the Department or component for the administration of the law extending such assistance.

(c) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(d) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(e) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals, or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(f) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(g) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(h) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(i) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request or plan.

§ 300.3 Application.

This part applies to any program for which Federal financial assistance is authorized under a law administered by any component of the Department of Defense, including the Federally-assisted programs and activities listed in Appendix A of this part. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to approval prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance, extended under any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization. The fact that a program or activity is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

§ 300.4 Policy.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this Directive applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration

which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this subparagraph does not limit the generality of the prohibition in paragraph (a) of this section.

§ 300.5 Responsibilities.

(a) The Assistant Secretary of Defense (Manpower) shall be responsible for insuring that the policies of this part are effectuated throughout the Department of Defense. He may review from time to time as he deems necessary the implementation of these policies by the components of the Department of Defense.

(b) The Secretary of each Military Department is responsible for implementing this part with respect to programs and activities receiving financial assistance from his Military Department; and the Assistant Secretary of Defense (Manpower) is responsible for similarly implementing this part with respect to all other components of the Department of Defense. Each may designate official(s) to fulfill this responsibility in accordance with § 300.2(b).

(c) The Assistant Secretary of Defense (Manpower) or, after consultation with the Assistant Secretary of Defense (Manpower), the Secretary of each Military Department or other responsible Department official designated by the Assistant Secretary of Defense (Manpower) may assign to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 300.11), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations.

§ 300.6 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. In any case in which Federal financial assistance is extended without an application having been made, such extension shall be subject to the same assurances as if an application had been made. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subguarantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) The assurance required in the case of a transfer of surplus real property shall be inserted in the instrument effecting the transfer of any such surplus land, together with any improvements located thereon, and shall consist of (i) a condition coupled with a right to be reserved to the component of the Department of Defense concerned to revert title to the property in the event of breach of such nondiscrimination condition during the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, and (ii) a covenant running with the land for the same period. In the event a transferee of surplus real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(3) The assurance required in the case of a transfer of surplus personal property shall be inserted in a written agreement by and between the Department of Defense component concerned and the recipient.

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, or a statement of the extent to which it is not, at the time the statement is made, so conducted, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this Directive, including methods of administration which give reasonable assurance that any noncompliance indicated in the statement under subparagraph (1) of this paragraph will be corrected. In cases of continuing State programs in which applications are not made, the extension of Federal financial assistance shall be subject to the same conditions under this subsection as if applications had been made.

(c) *Assurances from institutions.* (1) In the case of Federal financial assistance to an institution of higher education, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 300.7 Compliance information.

(a) *Cooperation and assistance.* Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official

may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations imposed pursuant to this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other institution or person and this institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 300.8 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee(s) shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official.

(c) *Investigations.* The responsible Department official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination of whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) if an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided in § 300.9.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the responsible Department official will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall not be disclosed except when necessary to carry out the purposes of this part including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 300.9 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law as determined by the responsible Department official. Such other means may include, but are not limited to (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceedings under State or local law.

(b) *Noncompliance with § 300.6.* If an applicant fails or refuses to furnish an assurance required under § 300.6 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The component of the Department of Defense concerned shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the component shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* Except as provided in paragraph (b) of this section no order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding, after opportunity for a hearing (as provided in § 300.10), of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Secretary of Defense pursuant to § 300.11, and (4) the expiration of 30 days after the Secretary of Defense has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to affect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Assistant Secretary of Defense (Manpower), (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 300.10 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 300.11, reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of hearing. An applicant or recipient may waive a hearing and submit written information and argument. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and

§ 300.11(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the responsible component of the Department of Defense in Washington, D.C., at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the component requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated by him.

(c) *Hearing examiner.* The examiner shall be a field grade officer or civilian employee above the grade of GS–12 (or the equivalent) who shall be a person admitted to practice law before a Federal court or the highest court of a State.

(d) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the responsible component of the Department shall have the right to be represented by counsel.

(e) *Procedures.* (1) The recipient shall receive an open hearing at which he or his counsel may examine any witnesses present. Both the responsible Department official and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(f) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Assistant Secretary of Defense (Manpower), the Secretary of a Military Department, or other responsible Department official designated by the Assistant Secretary of Defense (Manpower) after consultation with the Assistant Secretary of Defense (Manpower) may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of appropriate procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 300.11.

§ 300.11 Decisions and notices.

(a) *Decision by person other than the responsible department official.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

(b) *Decisions on record or review by the responsible department official.* Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 300.10(a), a decision shall be made by the responsible Department official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by the Secretary of Defense.* Any final decision of a responsible Department official which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary of Defense, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Contents of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this part.

§ 300.12 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 300.13 Effect on other issuances.

All issuances heretofore issued by any officer of the Department of Defense or its components which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (a) Executive Orders 10925 and 11114 and issuances thereunder, (b) the "Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health, Education, and Welfare, and of Labor, 28 F.R. 734, or (c) Executive Order 11063 and issuances thereunder, or any other issuances, insofar as such Order or issuances prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

§ 300.14 Implementation.

The Secretary of each Military Department shall submit regulations implementing this part to the Assistant Secretary of Defense (Manpower).

§ 300.15 Effective date.

This part shall become effective on the 30th day following the date of its publication in the FEDERAL REGISTER.

ROBERT S. MCNAMARA,
Secretary of Defense.

Approved: December 28, 1964.
LYNDON B. JOHNSON.

APPENDIX A

PROGRAMS TO WHICH THIS DIRECTIVE APPLIES

1. The Army and Air National Guard (Title 32, United States Code).

2. Various programs involving loan or other disposition of surplus property (various general and specialized statutory provisions including: 40 United States Code 483, 484, 512; 49 United States Code 1101–1119; 10 United States Code 2541, 2542, 2543, 2572, 2662, 7308, 7541, 7542, 7545, 7546, 7547).

3. National Program for Promotion of Rifle Practice (10 United States Code 4307 and annual Department of Defense Appropriation Act).

4. National Defense Cadet Corps Program (10 United States Code 3540(b), 4651).

5. Office of Civil Defense assistance to programs of adult education in civil defense subjects (50 United States Code App. 2281 (e), (f)).

6. Office of Civil Defense radiological instruments grants (50 United States Code App. 2281(h)).

7. Office of Civil Defense program (with Public Health Service) for development of instructional materials on medical self-help (50 United States Code App. 2281 (e), (f)).

8. Office of Civil Defense university extension programs for civil defense instructor training (50 United States Code App. 2281 (e))

9. Office of Civil Defense programs for survival supplies and equipment, survival training, emergency operating center construction, and personnel and administrative expenses (50 United States Code App. 2281(i), 2285).

10. Office of Civil Defense Shelter Provisioning Program (50 United States Code App. 2281(h)).

11. Office of Civil Defense assistance to students attending Office of Civil Defense schools (50 United States Code App. 2281(e)).

12. Office of Civil Defense loans of equipment or materials from OCD stockpiles for civil defense, including local disaster purposes (50 United States Code App. 2281).

13. Navy Science Cruiser Program (SecNav Instruction 5720.19A).

14. Civil Air Patrol (10 United States Code 9441).

[F.R. Doc. 64–13519; Filed, Dec. 30, 1964; 8:51 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of the Treasury

SUBCHAPTER A—GENERAL

[CGFR 64-91]

PART 24—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE UNITED STATES COAST GUARD—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Chapter I, Subchapter A, 33 CFR is hereby amended by adding the following new Part 24:

Sec.
24.1 Purpose.
24.5 Application of this part.
24.10 Discrimination prohibited.
24.15 Assurances required.
24.20 Compliance information.
24.25 Conduct of investigations.
24.30 Procedure for effecting compliance.
24.35 Hearings.
24.40 Decisions and notices.
24.45 Judicial review.
24.50 Effect on other regulations; forms and instructions.
24.55 Definitions.
24.60 Programs to which this part applies.

§ 24.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Coast Guard.

§ 24.5 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Coast Guard, including the Federally-assisted programs and activities listed in § 24.60. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of the regulation pursuant to an application approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization. The fact that a program or activity is not listed in § 24.60 shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to this section by notice published in the FEDERAL REGISTER.

§ 24.10 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny any individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(5) A recipient may not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly.

§ 24.15 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The Commandant shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) The assurance required in the case of a transfer of an interest in real property by way of permit, license, easement, or lease shall be inserted in the instrument effecting the transfer and shall contain a condition coupled with a right reserved to the Coast Guard to revoke and cancel the transfer in the event of breach of such nondiscrimination condition during the period of the transfer.

(3) Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR 101–6.2).

(b) *Pre-existing permit, license, easement or lease.* In any case where a permit, license, easement or lease of real property, with or without improvements, or a similar transfer of an interest in real property, representing Federal financial assistance, has been executed by the Coast Guard prior to the effective date of this part, and the instrument effecting the transfer contains a clause making it revocable at will or within a stated period at the option of the Coast Guard, the recipient, after receiving reasonable notice to do so, shall (1) submit a statement that the property is being utilized in compliance with all requirements imposed by or pursuant to this part, or a

statement of the extent to which it is not, at the time the statement is made, so utilized, and (2) provide such methods of administration for the utilization of the property as are found by the Commandant to give reasonable assurance that the recipient will comply with all requirements imposed by or pursuant to this part, or reasonable assurance that any noncompliance indicated in the statement under clause (1) will be corrected.

(c) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education or to a nonprofit organization whose primary purpose is the conduct of scientific research (including assistance for construction, for research, for a special training project, for a student loan program, or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education or any other institution or organization, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the Commandant, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility, or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 24.20 Compliance information.

(a) *Cooperation and assistance.* The Commandant shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Commandant or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Commandant or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the Commandant or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Commandant finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 24.25 Conduct of investigations.

(a) *Periodic compliance reviews.* The Commandant or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Commandant or his designee a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the Commandant or his designee.

(c) *Investigations.* The Commandant or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Commandant or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 24.30.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the Commandant or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 24.30 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 24.15.* If an applicant fails or refuses to furnish an assurance required under § 24.15 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Coast Guard shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Coast Guard shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the Commandant has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Secretary pursuant to § 24.40(e), and (4) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the par-

ticular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the Commandant had determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Secretary, (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 24.35 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 24.30(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Commandant that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 24.30(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Coast Guard in Washington, D.C., at a time fixed by the Commandant unless he determines that the convenience of the applicant or recipient or of the Coast Guard requires that another place be selected. Hearings shall be held before the Commandant or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Coast Guard shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Coast Guard and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 24.40.

§ 24.40 Decisions and notices.

(a) *Decision by person other than the Commandant.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Commandant for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the Commandant his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Commandant may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the Commandant shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the Commandant.

(b) *Decisions on record or review by the Commandant.* Whenever a record is certified to the Commandant for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Commandant conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the Commandant shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 24.35(a) a decision shall be made by the Commandant on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or the Commandant shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Secretary.* Any final decision of the Commandant which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Commandant that it will fully comply with this part.

§ 24.45 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 24.50 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Coast Guard, or by the Secretary, which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color,

or national origin under any program to which this part applies, and which authorizes the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925 and 11114 and regulations issued thereunder, or (2) any other regulations or instructions insofar as such regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The Commandant shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 24.40), including the achievement of effective coordination and maximum uniformity within the Executive Branch of the Government in the application of title VI and this part to similar programs and in similar situations.

§ 24.55 Definitions.

As used in this part—

(a) The term "Secretary" means the Secretary of the department in which the Coast Guard is operating.

(b) The term "Commandant" means the Commandant of the Coast Guard.

(c) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(d) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(e) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(f) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(g) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(h) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(i) The term "applicant" means one who submits an application, request, or plan required to be approved by the Commandant or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

§ 24.60 Programs to which this part applies.

(a) Lease of real property and the grant of permits, licenses, easements and rights of way covering real property under control of the Coast Guard, 14 U.S.C. 93 (n) and (o).

(b) Utilization of Coast Guard personnel and facilities to assist any State, Territory, Possession, or political subdivision thereof, 14 U.S.C. 141(a).

(c) Detail of Coast Guard personnel for duty in connection with maritime instruction and training by the States, Territories, and Puerto Rico, 14 U.S.C. 148.

(d) Disposal of obsolete and other Coast Guard material to sea scout service of Boy Scouts of America, any incorporated unit of the Coast Guard Auxiliary, and public body or private organization not organized for profit, 14 U.S.C. 641(a).

(e) Grants for the support of basic scientific research to nonprofit institutions of higher education and nonprofit organizations whose primary purpose is conduct of scientific research, 42 U.S.C. 1891.

Effective date. This part shall become effective on the 30th day following the date of its publication in the FEDERAL REGISTER.

Dated: December 15, 1964.

G. D'ANDELOT BELIN,
Acting Secretary of the Treasury.

Approved: December 28, 1964.

LYNDON B. JOHNSON.

[F.R. Doc. 64-13520; Filed, Dec. 30, 1964; 8:51 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 18—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE VETERANS ADMINISTRATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Title 38 CFR is hereby amended by adding the following new Part 18:

Sec.
18.1 Purpose.
18.2 Application of this part.
18.3 Discrimination prohibited.
18.4 Assurances required.
18.5 Illustrative applications.
18.6 Compliance information.
18.7 Conduct of investigations.
18.8 Procedure for effecting compliance.
18.9 Hearings.
18.10 Decisions and notices.
18.11 Judicial review.
18.12 Effect on other regulations; forms and instructions.
18.13 Definitions.

AUTHORITY: The provisions of this Part 18 are issued under sec. 602, 78 Stat. 252, and the laws referred to in Appendix A.

§ 18.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Veterans Administration.

§ 18.2 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Veterans Administration, including the Federally assisted programs and activities listed in Appendix A of this part. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 18.3. The fact that a program or activity is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

§ 18.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(c) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

§ 18.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible agency official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR Subpart 101–6.2).

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies (including the programs listed in Appendix A) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, or a statement of the extent to which it is not, at the time the statement is made, so conducted, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible agency official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such pro-

gram will comply with all requirements imposed by or pursuant to this part, including methods of administration which give reasonable assurance that any noncompliance indicated in the statement under subparagraph (1) of this paragraph will be corrected. In any case in which the recipient is claiming financial assistance under a continuing program pursuant to arrangements entered into prior to the effective date of this part, the assurances provided by this paragraph shall be included in the first application or claim for assistance on or after the effective date of this part.

§ 18.5 Illustrative applications.

The following examples will illustrate the application of the foregoing provisions to certain programs of the Veterans Administration. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by title VI of the Act and this part, as a condition of the receipt of Federal financial assistance.)

(a) In grant programs which support the provision of health or welfare services for veterans in State homes, discrimination in the selection or eligibility of individuals to receive the services, and segregation or other discriminatory practices in the manner of providing them, are prohibited. This prohibition extends to all facilities and services provided by the State as grantee under the program or by a political subdivision of the State. It extends also to services purchased or otherwise obtained by the grantee (or political subdivision) from hospitals, nursing homes, schools, and similar institutions for beneficiaries of the program, and to the facilities in which such services are provided, subject, however, to the provisions of § 18.3(c).

(b) In grant programs to assist in the construction of facilities for the provision of health or welfare services assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be prohibited as a condition of Federal operating grants for the support of such services. Thus, as a condition of grants for the construction of a State home for furnishing nursing home care, assurances will be required that there will be no discrimination in the admission or treatment of patients. In the case of such grants the assurance will apply to patients, to interns, residents, student nurses, and other trainees, and to the privilege of physicians, dentists, and other professionally qualified persons to practice in the nursing home, and will apply to the entire facility for which, or for a part of which, the grant is made, and to facilities operated in connection therewith.

(c) Upon transfers of real or personal surplus property for health or educational uses, discrimination is prohibited to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

(d) A recipient may not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly. Thus a State, in selecting or approving projects or sites for the construction of a nursing home which will receive Federal financial assistance, may not base its selections or approvals on criteria which have the effect of defeating or of substantially impairing accomplishment of the objectives of the Federal assistance program as respects individuals of a particular race, color, or national origin.

§ 18.6 Compliance information.

(a) *Cooperation and assistance.* Each responsible agency official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible agency official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible agency official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible agency official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible agency official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 18.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible agency official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible agency official or his designee a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible agency official or his designee.

(c) *Investigations.* The responsible agency official or his designee will initiate a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible agency official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 18.8.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the responsible agency official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 18.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 18.4.* If an applicant fails or refuses to furnish an assurance required under § 18.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Veterans Administration shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Veterans Administration shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible agency official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Administrator pursuant to § 18.10(e), and (4) the expiration of 30 days after the Administrator has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible agency official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Administrator, (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 18.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 18.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible agency official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 18.8(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Veterans Administration in Washington, D.C., at a time fixed by the responsible agency official unless he determines that the convenience of the applicant or recipient or of the Veterans Administration requires that another place be selected. Hearings shall be held before the responsible agency official or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Veterans Administration shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Veterans Administration and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Administrator may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 18.10.

§ 18.10 Decisions and notices.

(a) *Decision by person other than the responsible agency official.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible agency official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible agency official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible agency official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible agency official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible agency official.

(b) *Decisions on record or review by the responsible agency official.* Whenever a record is certified to the responsible agency official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible agency official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible agency official shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 18.9(a) a decision shall be made by the responsible agency official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible agency official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Administrator.* Any final decision of a responsible agency official (other than the Administrator) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Administrator, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible agency official that it will fully comply with this part.

§ 18.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 18.12 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Veterans Administration which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): Executive Orders 10925 and 11114 and regulations issued thereunder, or (2) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions, insofar as such Order, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible agency official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Administrator may from time to time assign to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 18.10), including the achievement of effective coordination and maximum uniformity within the Veterans Administration and within the Executive Branch of the Government in the application of title VI and this part to similar programs and in similar situations.

§ 18.13 Definitions.

As used in this part—

(a) The term "agency" means the Veterans Administration, and includes each of its operating agencies and other organization units.

(b) The term "Administrator" means the Administrator of Veterans Affairs.

(c) The term "responsible agency official" with respect to any program receiving Federal financial assistance means the Administrator or other official of the Veterans Administration who by law or by delegation has the principal responsibility within the Veterans Administration for the administration of the law extending such assistance.

(d) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(e) The term "Federal financial assistance" includes (1) grants of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(f) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including health, welfare, medical rehabilitation, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(g) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(h) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(i) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(j) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible agency official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

Effective date. This part shall become effective on the 30th day following the date of its publication in the FEDERAL REGISTER.

Dated: December 11, 1964.

[SEAL] W. J. DRIVER,
Deputy Administrator.

For: J. S. GLEASON, Jr.,
Administrator of Veterans Affairs.

Approved: December 28, 1964.

LYNDON B. JOHNSON.

APPENDIX A

PROGRAMS TO WHICH THIS PART APPLIES

1. Payments to State Homes (sec. 641, title 38, United States Code).

2. State Home facilities for furnishing nursing home care (secs. 5031–5037, title 38, United States Code).

3. Space and office facilities for representatives of recognized national organizations (sec. 3402(a)(2), title 38, United States Code).

[F.R. Doc. 64–13521; Filed, Dec. 30, 1964; 8:51 a.m.]